

# THE DUTY TO RELIEVE POVERTY

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## **DECLARATION**

I hereby declare that this thesis is my original work and it has been written by me in its entirety. I have duly acknowledged all the sources of information which have been used in the thesis.

This thesis has also not been submitted for any degree in any university previously.



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Annabelle Wong

17 August 2015

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## **ABSTRACT**

Debates on poverty relief have often focused on redistributing resources to the poor. In this thesis, my first aim is to demonstrate that Immanuel Kant's system of right consistently supports both domestic poverty relief by means of public redistribution, and relief to impoverished foreigners by granting them refuge. I contend that Kant's discussion of right implies that the state is unconditionally obliged to redistribute resources to impoverished citizens, so as to protect domestic public right. But this duty does not extend to redistribution across borders, because this form of poverty relief is justified only as a duty of the state to secure public right for its own citizens. Instead, Kant's discussion of international and cosmopolitan right suggests that states are obliged to assist economic refugees, who are imperiled by their exclusion from a civil rightful condition and have a right to hospitality. Although dealing with poverty is essential in protecting the human right to freedom, the defensibility of a particular means of relief is ultimately context-dependent. There is no single 'right' way to relieve poverty. My second aim is to defend the argument that the poor's right to relief in both domestic and supranational contexts is nevertheless unenforceable. Because a supranational sovereign is theoretically impossible, it cannot be just for states to be externally coerced into redistributing resources to impoverished citizens or accommodating economic refugees. Ultimately, the poor's right to relief is merely provisional.

## 1. A Kantian Argument for Poverty Relief

My aim in this thesis is to examine the problem of poverty and to provide a systematic treatment of the normative issues involved in justifying poverty relief. For the purposes of this thesis, I leave open the possibility of interpreting the duty of relief as one of beneficence,<sup>1</sup> and focus instead on relief as a matter of justice. I aim to determine whether the duty of relief is enforceable<sup>2</sup> and how it could be justifiable, even if it is based merely on provisional right. I propose a framework for conceiving of poverty relief as a duty owed by the state to persons within and beyond its borders. Focusing on Immanuel Kant's system of right and his treatment of poverty, I show how that system supports two kinds of state-led poverty relief: domestic relief through public redistribution, and relief to impoverished foreigners by granting refuge. In this thesis, I essentially propose and defend my own interpretation of what Kant actually said and could have said on the topic of poverty. My main contribution to the discussion of poverty relief as a matter of global justice is the argument that there is no single 'right' way to relieve poverty, and that relief efforts need not necessarily involve redistribution to the poor. Although poverty relief is theoretically essential to protecting the human right to freedom, the defensibility of a particular *means* of relief is ultimately context-dependent. I argue that the state is obliged to provide relief to impoverished citizens and grant entry to economic refugees. Kant's system

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<sup>1</sup> See, for instance, Robert B. Louden, *Kant's Impure Ethics: From Rational Beings to Human Beings* (New York: Oxford University Press, 2000), 66.

<sup>2</sup> In this thesis, I will be working with Kant's conception of enforceability (i.e. that rights are enforceable only under an overarching coercive authority). Since I am focusing on an exegetical reading of Kant's ideas, I leave the task of critically examining the soundness of this conception for further exploration elsewhere.

of right provides a framework for defending these fundamentally different means of relief.

Arguably, Kant is the only author to provide a single model of justice across the national, international, and cosmopolitan levels.<sup>3</sup> This model unfolds from a single ‘axiom of external freedom’ (the assumption of an original right to freedom that can coexist with that of everyone else according to a universal law) and the postulates of private and public right.<sup>4</sup> Kant’s methodical and broad treatment of right bridges the analytic gap between justice and economic redistribution by making it possible to conceive of extreme economic need as deprivation of the innate human right to freedom.<sup>5</sup> I will demonstrate how the practical relation between the right to freedom and the right to food or money, implies that human beings have a right to material conditions under which they are not dependent on private charity. I argue that Kant’s political theory provides a systematic approach to understanding poverty in terms of its pernicious effects on relations between agents.

My argument runs counter to libertarian and other interpretations of Kant’s ethics, which consider poverty relief to either be an imperfect duty of beneficence<sup>6</sup> or a problem extrinsic to public right. Some of these interpretations maintain that Kant’s views on welfare are “incompatible with his legal philosophy and, hence, that there is no room for redistributive

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<sup>3</sup> B. Sharon Byrd and Joachim Hruschka, *Kant's Doctrine of Right: A Commentary* (Cambridge: Cambridge University Press, 2010), 1.

<sup>4</sup> Chapter 2.I will elaborate on this “axiom of external freedom”.

<sup>5</sup> It is important to note that “the German *Recht* does not distinguish between right as a legitimate claim to exercise a personal capacity and justice as an impersonal body of laws governing action—especially in Kant’s hands.” See Ian Hunter, “The Metaphysics of Law,” in *Rival Enlightenments: Civil and Metaphysical Philosophy in Early Modern Germany* (Cambridge: Cambridge University Press, 2001), 323.

<sup>6</sup> See Allen Wood, *Kantian Ethics*, (Cambridge: Cambridge University Press, 2008), 193-94, for a discussion of this interpretive approach.

policies in his political theory.”<sup>7</sup> Others regard redistribution as merely instrumental to the achievement of some other ends, or as a duty of virtue rather than of justice, or as integral to a just and rightful condition defined in egalitarian terms. In contrast, I argue that for Kant, the state is responsible not for promoting welfare but for relieving poverty, understood as a threat to public right. My discussion draws primarily on Kant’s *Doctrine of Right* (1797), in which Kant’s “specific goal is to ground the obligation to obey laws which govern external acts.”<sup>8</sup> I supplement my interpretation of it with reference to *Perpetual Peace* (1795) (especially in my discussion of international right and poverty relief) and, to a lesser extent, *On the Common Saying* (1793). There are large discrepancies among these works of Kant on justice, although the *Doctrine of Right* can be considered Kant’s “final statement on law and rights.”<sup>9</sup>

This thesis is primarily exegetical. I start with Kant’s ideas and contribute some original insights and arguments that go beyond the secondary literature I examine. My discussion is divided into five main parts. The next chapter identifies the theoretical necessity of public right by elucidating the merely provisional nature of innate and private right. The third chapter explicates the state’s role in securing public right for its citizens. Because the poor are essentially excluded from and thereby threaten public right, I argue that the state must guarantee its citizens unconditional poverty relief. The possibility that states may nevertheless fail to relieve poverty within their borders raises

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<sup>7</sup> See Sorin Baiasu, “Kant’s Justification of Welfare,” *Diametros* 39 (2014): 7-10, for a more detailed discussion of thinkers who fall under each of these categories of views.

<sup>8</sup> Alexander Kaufman, *Welfare in the Kantian State* (New York: Oxford University Press, 1999), 9.

<sup>9</sup> Byrd and Hruschka, 8.



the question of whether and how the international community can intervene. The fourth chapter explains the conceptual obstacles to instituting a supranational sovereign authority. In the fifth chapter, I contend that states are obliged to grant refuge to impoverished foreigners, because the cosmopolitan right to hospitality suggests that the latter cannot be allowed to perish. However, the conceptual impossibility of a supranational sovereign means that states cannot be coerced into fulfilling their duties of relief to their own citizens or economic refugees. This leads me to conclude in the sixth chapter that the poor's right to relief is ultimately unenforceable and therefore merely provisional.

But what is the normative currency of a merely provisional right? Kant does not provide direct answers to this question, but his discussion of the right of states<sup>10</sup> yields some important insights. The provisional right of states to engage one another on the basis of commonly agreed regulations is unenforceable, given the lack of an international sovereign and any impossibility of top-down enforcement. This lack ensures that the right to relief is unenforceable, since states cannot be externally coerced into protecting this right. Yet, provisional right matters because it delineates a space within which the only viable framework for just interactions must be built from the ground up on common agreement. The very idea that provisional right is unenforceable therefore suggests two things. First, it is entirely up to agents themselves to institute and abide by mutually agreeable rules of conduct. Second, this realm of provisional right will always be tenuous and fraught with challenges, especially where cooperation between

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<sup>10</sup> Chapter 4 provides a more detailed discussion of the right of states.

agents is concerned, since unilateral action and defection may very well go unpunished.

In short, provisional right opens up a normative space that is characterized by the collective action problem, where positive right is arguably the best option for developing a just system of conduct. My opinion is that Kant considers provisional right to be a non-ideal form of justice that faces significant problems. Still, he would not deny that agents ought to take a constructive and cooperative approach to finding better ways of instituting provisional right, however flawed this enterprise may be. Indeed, Kant emphatically states that the mere *possibility* of achieving an ideal obliges us to at least try.<sup>11</sup> Although ideal (enforceable) justice may be unachievable, the quest for justice cannot simply be abandoned. I leave the task of working out how provisional right can best be instituted and protected as an avenue for further research, perhaps in the realm of moral philosophy or public policy.

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<sup>11</sup> See Immanuel Kant, "On the Common Saying: That May Be True in Theory but It Does Not Apply in Practice," in *Practical Philosophy*, translated and edited by Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 309 (8:307-13).

## 2. The Need for Public Laws

One of my main arguments in this thesis is that the state is ultimately responsible for securing public right for its citizens, which requires that it guarantee them unconditional poverty relief. The significance of public right must first be understood in terms of the need for universal reciprocal coercion. Kant's system of right begins with the assumption of human beings' innate right to freedom, which entails the postulate of private right to external things. These two kinds of right complete the specification of independence between persons, but are merely provisional. People can be secure in exercising their innate and private rights only under a coercive public institution that guarantees their equal freedom. This chapter aims to distil the key principles of right via an exegetical discussion of innate, private and public right. These principles of right foreground the next chapter's discussion of the state, its system of juridical laws, and its duty to relieve poverty, as integral to Kant's conception of public right.

### 2.1 Innate Right to Freedom

Kant's doctrine of right starts with the assumption of an original, innate human right to freedom.<sup>12</sup> He states that "[f]reedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right

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<sup>12</sup> Patrick Riley suggests that Kant's claim that "a rational nature exists as an end in itself" is teleological in nature and is fully expounded in Kant's third *Critique*. See *Kant's Political Philosophy* (Totowa, N.J.: Rowman and Littlefield, 1983), 58.

belonging to every man by virtue of his humanity.”<sup>13</sup> Each human being has by nature an innate right to freedom and to his or her own body as the primary locus of this freedom.<sup>14</sup> This innate right to freedom is natural in that it does not depend on any act of acquisition;<sup>15</sup> it is what would today be called a human right, with the difference that for Kant there is only one natural or human right, not a multiplicity of rights. Despite the continuing debate over whether freedom is good in itself<sup>16</sup> or requires positive justification in view of the dangers of failing to restrict it,<sup>17</sup> I take the innate human right to freedom as a conceptual starting point for my thesis. I propose that the innate right to freedom can be understood as follows: because human beings are by definition equal in their humanity, no one could be entitled (at least originally) to dominate another, and therefore all are entitled to be equally free.

Arguably, the ultimate basis of Kant’s political philosophy is the normative idea that each person is rightly entitled to be his or her own master.<sup>18</sup> Although the innate right to freedom in determining one’s own choices encompasses both internal and external freedom<sup>19</sup> as different uses of the single faculty of free choice,<sup>20</sup> Kant considers only the latter as the subject of justice. Internal freedom is the capacity for one’s choices to be determined by pure reason rather than by “sensible impulses,”<sup>21</sup> or one’s sensual drives and desires.<sup>22</sup> It

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<sup>13</sup> Immanuel Kant, “The Metaphysics of Morals,” in *Practical Philosophy*, translated and edited by Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 393 (6:237).

<sup>14</sup> Ernest J. Weinrib, “Poverty and Property in Kant’s System of Rights,” *Notre Dame Law Review* 78, no. 3 (2003): 804.

<sup>15</sup> Kant, “The Metaphysics of Morals,” 393 (6:237).

<sup>16</sup> Jeffrie G. Murphy, *Kant: The Philosophy of Right* (London: Macmillan, 1970), 91.

<sup>17</sup> Allen Rosen, *Kant’s Theory of Justice* (Ithaca: Cornell University Press, 1996), 41.

<sup>18</sup> Arthur Ripstein, *Force and Freedom: Kant’s Legal and Political Philosophy* (Cambridge, MA: Harvard University Press, 2009), 4-5.

<sup>19</sup> Kant, “The Metaphysics of Morals,” 374-75 (6:213).

<sup>20</sup> Hunter, 319.

<sup>21</sup> Kant, “The Metaphysics of Morals,” 375 (6:213-14).

<sup>22</sup> Byrd and Hruschka, 84-85.

consists in “*independence* from the sensible world (negative internal freedom), and simultaneous *dependence* on the moral law”<sup>23</sup> (positive internal freedom), which is characterized by choosing to act rightly simply because it is right to do so.<sup>24</sup> External freedom, in contrast, is independence from the coercive choices of others (negative external freedom) and security in being able to exercise one’s rights through the institution of public law (positive external freedom).<sup>25</sup> The universal law of right—the standard by which Kant determines what is just—concerns only “the external and indeed practical relation of one person to another, insofar as their actions, as deeds, can have (direct or indirect) influence on each other.”<sup>26</sup> In contrast, the requirement that “I make it my maxim to act rightly is a demand that ethics makes on me.”<sup>27</sup> Because my motivations alone could not affect others as my external actions could, justice cannot require that I make acting rightly the motivation behind my action, for “anyone can be free so long as I do not impair his freedom by my *external action*.”<sup>28</sup>

The formulation of external freedom reveals the inherently relational nature of right, and derives from the individual’s innate right to freedom the right to be one’s own master<sup>29</sup> and to set and determine the pursuit of one’s own ends. To

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<sup>23</sup> Ibid., 87.

<sup>24</sup> Kant’s descriptions of freedom as ‘negative’ or ‘positive’ are meant to capture a distinction between freedom as independence from external influences (negative freedom) and freedom as voluntary adherence and dependence on positive laws (positive freedom). Kant’s use of these terms is markedly different from Isaiah Berlin’s well-known distinction between negative and positive freedom. See Isaiah Berlin, “Two Concepts of Liberty,” in *Four Essays on Liberty* (London: Oxford University Press, 1969).

<sup>25</sup> Byrd and Hruschka, 88.

<sup>26</sup> Kant, “The Metaphysics of Morals,” 387 (6:230).

<sup>27</sup> Ibid., 388.

<sup>28</sup> Ibid., 388.

<sup>29</sup> Byrd and Hruschka (see 82-83) further explain that the individual’s right to external freedom consists of five subsidiary rights including “(1) the right to equal treatment under the law, (2) the right to legal independence, (3) the right to be presumed innocent until the

be vested with this prerogative is to be entitled to exercise one's agency independently of others' coercive choices. Kant first articulates the relation of independence in its most basic form as a constraint on interpersonal interactions.<sup>30</sup> The innate right to freedom can be understood in terms of "independence from being constrained by another's choice,"<sup>31</sup> on the condition that the exercise of this right could coexist with that of everyone else. Conversely, the negation of this right to freedom is dependence on or interference from another person.<sup>32</sup> The individual's innate right to freedom thus translates into a right to external freedom, which concerns only the relation of free choice between interacting agents, and whether the action of one is compatible with the freedom of all others.<sup>33</sup>

This raises the question of how the innate human right to freedom could be a logically coherent concept, given that individuals can come into contact with one another and potentially conflict over the exercise of their rights to freedom.<sup>34</sup> The assumption of the original and innate right to freedom thus generates Kant's axiom of external freedom, which makes possible the requirement for everyone to *act* toward each other according to the universal law of right.<sup>35</sup> This axiom posits that individual agents are free only to make and act on choices that respect everyone else's freedom, in view of the universal law of right—a specific demand of reason that "[a]ny action is *right* if it can coexist with everyone's freedom in accordance with a universal law,

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contrary is proved, and (4) the right to freedom of expression... [as well as (5)] the right to be one's own master."

<sup>30</sup> Ripstein, 17.

<sup>31</sup> Kant, "The Metaphysics of Morals," 393 (6:237).

<sup>32</sup> Ripstein, 15.

<sup>33</sup> Kant, "The Metaphysics of Morals," 387 (6:230).

<sup>34</sup> Byrd and Hruschka, 79.

<sup>35</sup> *Ibid.*, 10.

or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law.”<sup>36</sup> For instance, Scotty is innately free, but he is not free to kill Sulu. Scotty’s murder of Sulu is wrong because it denies Sulu the exercise of his own right to freedom. If one could exercise one’s innate right to freedom to deprive another person of the capacity to do so, this right would be self-defeating and fail to qualify as a universal human right. In other words, each person may have an original right to external freedom, but this right must be exercised within the limits set by the principle of universal law.

Consequently, any action that hinders a rightful exercise of freedom is wrong. Assuming that actions either accord with or contravene the principle of universal law, any action that is consistent with everyone’s freedom according to this principle is right, and any hindrance to such rightful actions violates this principle and is by definition wrong.<sup>37</sup> If Kenan’s action or condition does not contradict anyone else’s external freedom, then his action or condition is right and therefore permissible, because it accords with the principle of universal law. If Kel hinders Kenan in the performance of his action or the maintenance of his condition, Kel’s hindrance is wrong because it obstructs Kenan’s rightful exercise of external freedom, and thereby violates the principle of universal law. In short, such hindrance is wrong because it is incompatible with everyone’s rightful exercise of freedom.<sup>38</sup> Ultimately, wrongdoing denies the capacity for rightful relations between agents by violating the principle of universal law. This principle is the only rightful

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<sup>36</sup> Kant, “The Metaphysics of Morals,” 387 (6:230).

<sup>37</sup> Ibid., 388 (6:231).

<sup>38</sup> Ibid., 387 (6:230-31).

limiting condition of the individual's right to freedom because it is necessary to render the exercise of right universally consistent among agents.

It is also important to note that the aims and outcomes of one's choices and actions, and one's beneficence or maleficence toward others, are in themselves neither right nor wrong.<sup>39</sup> These are irrelevant to Kant's conception of right, which is concerned solely with the relation of agents' free choices and how individuals affect each other's external freedom.<sup>40</sup> Specific needs, wishes, aims and effects of outcomes are in themselves "purely internal" and cannot affect the necessarily 'external' relations between agents.<sup>41</sup> For instance, I may need food to survive, but this alone has no effect on whether my actions are compatible with everyone's freedom. It is only when agents choose to act on their respective needs or wishes that the external freedom of others could be affected.

## 2.2 Private Right to External Things

Kant shows that a complete specification of independence between interacting persons requires an account of the possibility that individuals can have entitlements to external things to be used in the pursuit of particular ends.<sup>42</sup> Because human beings are "sensibly affected" rational creatures<sup>43</sup> situated within a material reality,<sup>44</sup> the hypothesis that private property is impossible is

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<sup>39</sup> Ibid., 387 (6:230).

<sup>40</sup> Ibid., 387 (6:230).

<sup>41</sup> Otfried Höffe, *Kant's Cosmopolitan Theory of Law and Peace*, translated by Alexandra Newton (Cambridge: Cambridge University Press, 2006), 105.

<sup>42</sup> Ripstein, 17.

<sup>43</sup> Hunter, 321.

<sup>44</sup> See Paul Guyer, *Kant's System of Nature and Freedom: Selected Essays* (Oxford: Clarendon, 2005), 242.



simply absurd.<sup>45</sup> Kant therefore postulates that persons may acquire rights to external things, which encompass “the traditional categories of Roman private law, relations of property, contract, and status, which govern rights to things, to performances by other persons, and, in special cases, rights to other persons.”<sup>46</sup> However, when human beings use material things, they acquire material ends that can conflict with those of others.<sup>47</sup> Given the potential for conflict, the right to external things is private—in that it concerns rightful relations between private individuals<sup>48</sup>—and also merely provisional prior to the formation of a public rightful condition under which it can be guaranteed.

There are two key elements of the private right to property. First, I have a private right to an external thing if I can be wronged by another person’s use of this object without my consent.<sup>49</sup> If the right to external things was defined merely in terms of empirical possession, it would be entirely contingent on whoever happened to have physical control over an external object at a given time. Subsequently, it would be impossible for one person to wrong another in the use of external objects (which depends on first having physical control over them). One’s right to an external thing would be essentially meaningless because it could not then specify any entitlement against others. Kant suggests that private right to external objects must instead be defined in terms of “intellectual possession,” which makes it possible for an individual to be wronged by others who disturb him or her in the use of an object which he or

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<sup>45</sup> Rosen, 19.

<sup>46</sup> Ripstein, 17.

<sup>47</sup> Hunter, 324.

<sup>48</sup> Helga Varden, “A Kantian Conception of Global Justice,” *Review of International Studies* 37, no. 5 (2011): 2045.

<sup>49</sup> Kant, “The Metaphysics of Morals,” 401 (6:425).

she rightfully owns.<sup>50</sup> Put differently, private right to external things must be defined in these metaphysical terms<sup>51</sup> in order for its logical negation or corresponding violation to be defined.

Second, for external objects to be subject to one's choices and to be used for whatever purposes one sets, one must be free to set them aside while using other means at one's disposal.<sup>52</sup> External objects could in principle belong to someone else; therefore one must be able to preclude others' use of these objects. I am genuinely entitled to an object only when I have the capacity to decide not only when and how it is to be used, but also when and how it is *not* to be used, even when I am not in direct physical control over it. Kant describes such entitlement as "a merely rightful connection of the subject's will with that object in accordance with the concept of intelligible possession, independently of any relation to it in space and time."<sup>53</sup> For instance, Barbara has a right to her house even when she is away on vacation, which means that someone else could wrong her by infringing on her right to determine how her house is to be used. Kenneth could infringe on Barbara's right to her house by making himself at home while she is away. Even if he were to leave her house in the exact same condition, he would still have wronged her by using her house for purposes she did not endorse.

In general, private right specifies an authorization to subject all others to an obligation to refrain from using the external objects of one's choice. This

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<sup>50</sup> Ibid., 403 (6:249).

<sup>51</sup> For some contrasting views on the defensibility of Kant's ideas on property rights, see Robert B. Pippin, "Mine and Thine? The Kantian State," in *The Cambridge Companion to Kant and Modern Philosophy*, edited by Paul Guyer (Cambridge: Cambridge University Press, 2006), p. 437; and Susan Meld Shell, *The Rights of Reason: A Study of Kant's Philosophy and Politics* (Toronto: University of Toronto Press, 1980), 144.

<sup>52</sup> Ripstein, 60-64.

<sup>53</sup> Kant, "The Metaphysics of Morals," 407 (6:254).

obligation is grounded in the postulate that one can first take external objects into possession, and the use of these objects subsequently lies within one's physical capacity and freedom of choice.<sup>54</sup>

### 2.3 Justifying Coercion

The material aspect of human nature not only explains how the innate right to freedom entails the postulate of private right to external things. It also establishes the potential for conflict and wrongdoing between human beings when they exercise their rights, despite their innate equality and freedom. The finite material conditions of human life and the fact that human beings are not solitary creatures together present opportunities for such conflict. For instance, space is finite just as a ten-dollar bill or any other resource is finite. Spock and Bones both spot a ten-dollar bill on the pavement, and although each is entitled to claim the ten-dollar bill for his personal purposes, they argue over who gets to do so. Because occupancy is exclusive, separate persons who each occupy space can come into conflict over its use.<sup>55</sup> Spock and Bones may therefore also argue over who gets to sit in the window seat on the plane. Given the potential for conflict that arises in spatial and physical terms, adequate principles of justice are required to reconcile the competing external claims of various agents.<sup>56</sup> In line with this, justifiable coercion consists in force that is used solely to promote justice, and persons should be coerced

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<sup>54</sup> Ibid., 405-6 (6:247-51).

<sup>55</sup> Ripstein, 12.

<sup>56</sup> Thomas Pogge, "Kant's Theory of Justice," in *Kant and Law*, edited by B. Sharon Byrd and Joachim Hruschka (Aldershot, UK: Ashgate, 2006), 410-411.

exactly insofar as is necessary to render their respective domains of external freedom compatible.<sup>57</sup>

Although coercion limits the exercise of everyone's innate right to external freedom, it is intrinsically justifiable. Coercion<sup>58</sup> is not merely permissible because it could be consistent with everyone's right to freedom.<sup>59</sup> It is necessary in bringing about a rightful state of affairs because universal reciprocal coercion<sup>60</sup> brings the conduct of agents into conformity with the standards of universal law. The legal principle of preventing or punishing violations of right presumes that "a hindrance to a hindrance of an effect itself promotes that effect," from which it follows that right can be authoritatively enforced.<sup>61</sup> Kant explains that "coercion which constrains everyone to pay his debts can coexist with the freedom of everyone, including that of debtors," in accordance with universal law.<sup>62</sup> Kant thus advocates the institutional use of force to preserve individual freedoms and, paradoxically, the possibility of legitimate external coercion is the very means to achieving freedom from external coercion.<sup>63</sup>

Such justifiable coercion also exemplifies the conceptual distinction between justice and virtue. Concerning "only external grounds for determining

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<sup>57</sup> Pogge, "Kant's Theory of Justice," 411.

<sup>58</sup> See Ripstein, 81-82. Ripstein also explains that two types of coercion are consistent with right: (1) prophylactic coercion which prospectively hinders hindrances by others, e.g. locking one's door to prevent burglary, and (2) coercion used retrospectively, e.g. reclaiming stolen goods from a burglar.

<sup>59</sup> Kant, "The Metaphysics of Morals," 389 (6:232).

<sup>60</sup> Kant argues that the concept of right can only be presented in terms of "a fully reciprocal and equal coercion brought under a universal law and consistent with it," since right understood as the capacity to obligate another person must also be understood to entail the possibility of enforcing compliance with this obligation, analogous to "the [*a priori*] possibility of bodies moving freely under the law of the *equality of action and reaction*." See Kant, "The Metaphysics of Morals," 389 (6:232).

<sup>61</sup> Guyer, Kant's System of Nature and Freedom, 199.

<sup>62</sup> Kant, "The Metaphysics of Morals," 389 (6:232).

<sup>63</sup> Howard Williams, *Kant's Political Philosophy* (New York: St. Martin's Press, 1983) 70-71.

choice,”<sup>64</sup> justice requires mere conformity of actions with right, just as rightful lawgiving demands mere conformity of an action with law. Justice does not depend on the virtue of agents who do the right thing simply because it is right. It depends instead on the possibility that agents can be compelled, in ways that are consistent with the freedom of each, to do the right thing. Justice is therefore directly connected “by the principle of contradiction [to] an authorization to coerce someone who infringes upon it.”<sup>65</sup> The theoretical possibility of wrongdoing reflects the fact that agents with *both* rational and empirical natures interact with one another.<sup>66</sup> Although the human being is a unitary subject of choice, its dual nature means that it must be governed by two kinds of law. Moral law governs man’s rational or intelligible being, while juridical laws are necessary to govern the effect of material factors on man’s external freedom.<sup>67</sup> The ethical concern with internal motives that determine agents’ choices and actions<sup>68</sup> contrasts with the juridical concern with ‘externally’ imputable motives—the capacity of agents for purposive action.<sup>69</sup> Justice, for Kant, requires only that agents exercise this capacity in ways that are consistent with everyone’s purposiveness.<sup>70</sup>

As an ancillary point, this explains why Kant does not regard juridical law as compensation for the failure of human beings to obey the moral law, but rather “as a distinct kind of legislation, suited to rational beings whose sensible

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<sup>64</sup> Kant, “The Metaphysics of Morals,” 389 (6:232).

<sup>65</sup> *Ibid.*, 387 (6:230-31).

<sup>66</sup> Höffe, “Kant’s Cosmopolitan Theory of Law and Peace,” 92.

<sup>67</sup> Hunter, 321.

<sup>68</sup> Rosen, 135.

<sup>69</sup> Shell, 123 (footnote).

<sup>70</sup> Ernest J. Weinrib, “Law as Idea of Reason,” in *Essays on Kant's Political Philosophy*, edited by Howard Williams (Chicago: University of Chicago Press, 1992), 39.

nature necessitates interaction through the possession of material goods.”<sup>71</sup> Justice does not specify a system of rules observance of which simply precludes conflict. Even if all human beings were good, juridical laws would still be conceptually necessary to reconcile their innate rights on a universal basis. In a world where people are capable of obstructing one another’s external freedom,<sup>72</sup> juridical laws constitute the “minimal—but also the maximally enforceable—moral conditions” for their interaction.<sup>73</sup> Juridical laws are at best indirectly ethical because they require only an action in conformity with duty, whereas morality has an additional and stricter demand—that the fulfillment of duty is an end for the agent and the determining ground for her action.<sup>74</sup> This conception of law reflects Kant’s emphatic distinction between justice and ethics, as well as his “dualist conception of man as both an empirical and intelligible being” limited by material reality.<sup>75</sup>

## 2.4 The Need for Public Right

Although the first two stages of independence—conceived in terms of innate and private right—complete the specification of interpersonal interaction, individuals cannot be secure in their enjoyment of these rights without a public authority to enforce them. In the ‘state of nature’, or the absence of a

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<sup>71</sup> Hunter, 322.

<sup>72</sup> Thomas Pogge, “Is Kant’s Rechtslehre a ‘Comprehensive Liberalism?’” in *Kant’s Metaphysics of Morals: Interpretative Essays*, edited by Mark Timmons (Oxford: Oxford University Press, 2002), 139.

<sup>73</sup> Weinrib, “Law as Idea of Reason,” 40.

<sup>74</sup> Höffe, “Kant’s Cosmopolitan Theory of Law and Peace,” 86. Williams also argues that legality for Kant is a necessary precondition for morality, since virtuous actions must also be legal, although legal actions may not be virtuous. See *Kant’s Political Philosophy*, 68.

<sup>75</sup> *Ibid.*, 67.

civil society that secures personal property through public laws,<sup>76</sup> the original innate right to freedom and the acquired private right to external objects are merely provisional.<sup>77</sup> The lawless state of nature is structurally unjust because individual rights lack systematic protection<sup>78</sup> against personal injury by others.<sup>79</sup> These natural and private rights can be enjoyed only in a civil condition.<sup>80</sup>

Even when one enjoys negative freedom from external injury, one is not free in the positive external sense until one enjoys conclusive rights under a public rightful condition. Given that everyone has an “immediate and unchosen dependence on the soil,” the acquisition of material things is unavoidable and human beings are all potentially interdependent in their use of the earth.<sup>81</sup> While reason determines that agents must exercise their freedom in ways that are consistent with the freedom of all, the uncontroversial empirical notion that the human world is finite suggests that some actions unavoidably limit the freedom of others.<sup>82</sup> Originally, everyone is innately equal in his or her right to freedom. The right to external things depends on unilateral acquisition that is consistent with the innate right of the proprietor. However, it also depends on the proprietor’s capacity to subordinate others to his or her purposes without being reciprocally bound to them, which is inconsistent with the innate

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<sup>76</sup> See Kant, MM, 397 (6:242).

<sup>77</sup> Arguably, the state of nature “exists wherever there is no established juridical system capable of enforcing laws to protect individual rights... [and] is therefore historically real for Kant, not simply a heuristic device: it exists in all prepolitical societies and whenever systems of public legal justice break down.” See Rosen, 9.

<sup>78</sup> Rosen, 10.

<sup>79</sup> Murphy, 104.

<sup>80</sup> Williams, *Kant's Political Philosophy*, 194.

<sup>81</sup> Shell, 130.

<sup>82</sup> Pippin, 432.

equality of all.<sup>83</sup> Kant therefore demonstrates how public right—understood as the totality of laws enforcing individual rights in a collective setting—is necessary to mitigate the insecurity that characterizes the state of nature.

Kant thus introduces a postulate of public right, which declares

*Do not wrong anyone (neminem laede) even if, to avoid doing so, you should have to stop associating with others and shun all society (Lex iuridica). (If you cannot help associating with others), enter into a society with them in which each can keep what is his (suum cuique tribue).*<sup>84</sup>

This second postulate indicates that the transition from the state of nature to civil society is based on the duty to create the conditions under which proprietary entitlements are fully rightful.<sup>85</sup> Without a public authority entitled to make, apply, and enforce laws, a system of private right is morally incoherent, because “the conceptual requirements of private right—the security of possession, clear boundaries between “mine and thine,” and the acquisition of property—cannot be satisfied.”<sup>86</sup> Integral to enjoyment of both the innate right to freedom and the private right to property is independence from external interference, which is possible only with the institution of public right to eradicate the problem of unilateral action that characterizes the state of nature.<sup>87</sup> Even Kant’s suggestion that individuals may coerce one another to leave the state of nature<sup>88</sup> expresses the mere fact that in the state of nature,

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<sup>83</sup> Weinrib, “Poverty and Property in Kant’s System of Rights,” 807.

<sup>84</sup> Kant, “The Metaphysics of Morals,” 392 (6:236-37).

<sup>85</sup> Weinrib, “Poverty and Property in Kant’s System of Rights,” 810.

<sup>86</sup> Ripstein, 23.

<sup>87</sup> Weinrib, “Poverty and Property in Kant’s System of Rights,” 810.

<sup>88</sup> Kant, “The Metaphysics of Morals,” 416 (6:264).



where no rights are conclusive, individuals cannot rightly be prevented from exercising unilateral force.

I therefore suggest that positive external freedom under public right is a *social good*, made possible only through reciprocity and cooperation when all agents sacrifice some of their freedom for the benefit of all.<sup>89</sup> Since the concept of strict or juridical right is defined in relational terms,<sup>90</sup> the idea of the united will shows *how* a conception of intelligible possession could be possible.<sup>91</sup> Intelligible possession implies that people could accumulate external things to the point of depriving others of what they need to exist.<sup>92</sup> Each person would only cease to be the victim of the other's exercise of freedom by giving up part of his own freedom (e.g. limiting his acquisition and use of external things to earn civil liberty or positive external freedom.<sup>93</sup> No one could rightly be compelled to refrain from encroaching upon another's freedom without a guarantee that the same kind of restraint will in equal measure be exercised with regard to him. Positive external freedom is therefore a social benefit that is critically dependent on the commitment of *all* agents to obedience.<sup>94</sup> Such reciprocity requires a public legal framework to supersede the state of nature and the cooperative problems that characterize it.<sup>95</sup>

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<sup>89</sup> Otfried Höffe, "The Dilemma of Natural Justice," in *Essays on Kant's Political Philosophy*, edited by Howard Williams. (Chicago: University of Chicago Press, 1992), 133.

<sup>90</sup> Katrin Flikschuh, *Kant and Modern Political Philosophy* (Cambridge: Cambridge University Press, 2000), 130.

<sup>91</sup> *Ibid.*, 145.

<sup>92</sup> Weinrib, "Poverty and Property in Kant's System of Rights," 815.

<sup>93</sup> Höffe, "The Dilemma of Natural Justice," 127.

<sup>94</sup> Murphy, 115.

<sup>95</sup> Höffe, "The Dilemma of Natural Justice," 139.

Contrary to those who claim that the state merely provides assurance for private property rights,<sup>96</sup> I argue that public right is not coextensive with private right. The claims of public right are fundamentally different, being “systemic claims citizens have only with regard to their own state.”<sup>97</sup> The individual’s innate right to freedom entails the possibility of intelligible possession that, given the fact of mutual interdependence, requires an authoritative common will to constrain individuals to interact in ways that are collectively consistent with their innate freedom.<sup>98</sup> This marks the transition from private to public property rights. Where the former was merely provisional, a public authority makes possible conclusive and enforceable property rights against others. What is *determinately* yours or mine is evidently not independent fact but “a socially dependent, variable, and negotiable boundary which exists by virtue of the mutual acknowledgment of both parties.”<sup>99</sup> Therefore, public right is made possible only by a united people, and is greater than the sum of their individual private rights.

This chapter has shown how the assumption of the innate human right to freedom begets the axiom that everyone is obliged to respect the external freedom of others. Furthermore, because human beings are both rational and material creatures, they may also acquire private rights to property. However, the finite nature of material reality and human sociability together generate the potential for conflict. This necessitates universal reciprocal coercion to preserve the equal external freedom of human beings. Such coercion is

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<sup>96</sup> See James Penner, “The State Duty to Support the Poor in Kant’s Doctrine of Right,” *British Journal of Politics & International Relations* 12, no. 1 (2010): 94-97.

<sup>97</sup> Varden, “A Kantian Conception of Global Justice,” 2054.

<sup>98</sup> Pippin, 434.

<sup>99</sup> *Ibid.*, 433.

possible only in a civil condition under the public authority of the state. It is only when human beings unite to establish their public rights under the state's authority that they can be equally secure in exercising their freedom. Where the poor are concerned, there is an important relation between public right and the state's responsibility to relieve poverty within its borders. This will be the subject of the next chapter.

### 3. Public Right and Poverty Relief

By showing how innate and private right are merely provisional, the previous chapter demonstrates the significance of public right as a social good where all agents must cooperate to secure their equal freedom. Kant appeals to problems of assurance, indeterminacy and unilateral judgments in characterizing the state as a coercive mechanism that limits the individual freedom of its citizens to establish collective freedom under a civil rightful condition.<sup>100</sup> Only the state can ensure public right by securing institutional conditions under which all citizens enjoy equal protection for their external freedom.<sup>101</sup> The first part of this chapter discusses key features of the state in terms of its capacity to secure public right. This supports my argument in the second part for the state's responsibility to relieve poverty, which threatens public right.

In the *Doctrine of Right*, Kant argues that the state has a right to tax some citizens to protect others from poverty—conceived as a condition of utter dependence on the charity of others and an incapacity to exercise one's right to freedom. The main problem with poverty is that it undermines its sufferers' capacity for autonomy. An important consequence of this problem is that the poor could not freely consent to be subjected to the state's coercive authority. Like Kant, I understand coercion to be legitimate when its subject could freely

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<sup>100</sup> See Ripstein, 17. In contrast to Kant's view that the state is integral to securing freedom in a collective setting, Neo-Kantians generally espouse the view that the state is merely instrumental in the achievement of the ideal of moral freedom, which is inherently unrelated to the state and its institutions. See, for instance, Onora O'Neill, *Bounds of Justice* (Cambridge: Cambridge University Press, 2000), 139; Helga Varden, "Kant's Non-Voluntarist Conception of Political Obligations: Why Justice is Impossible in the State of Nature," *Kantian Review* 13, no. 2 (2008): 31; and Paul Guyer, "Kantian Foundations for Liberalism," in *Kant On Freedom, Law, and Happiness* (Cambridge: Cambridge University Press, 2000), 237.

<sup>101</sup> Helga Varden, "Kant's Non-Absolutist Conception of Political Legitimacy – How Public Right 'Concludes' Private Right in the "Doctrine of Right"," *Kant-Studien* 101, no. 3 (2010): 333.

consent to it. The poor are not obliged to obey local laws to which they could not possibly consent, and the state cannot legitimately coerce them into doing so. As a result, the state's coercive authority over the poor is illegitimate. Excluded from a public rightful condition, the poor are in a lawless state of nature and must resort to exercising their provisional private rights to defend themselves against others—including, in this context, the state and their fellow citizens. Public right, which depends on the united will and subjection of *all* citizens, is thus undermined by the poor's entitlement to exercise private right. Consequently, even the wealthy cannot be secure in their property rights.

The state is responsible for relieving poverty not simply because the poor have been deprived of their right to freedom and are suffering. Rather, it is because the poor are not bound to respect public right (a consequence of their loss of freedom) that the state is responsible for relieving poverty on account of the threat it poses to public right. Two conclusions can be drawn from my argument. First, the victims of poverty and rightful beneficiaries of relief are individuals, not states. Legitimate statehood is qualified by the protection of citizens from poverty and other threats to their innate right to freedom because such protection is a necessary precondition for public right, which the state is responsible for securing. Reduced to complete dependence on the private charity of others when they lack protection from the state, the poor are effectively excluded from and even threaten a public rightful condition. Second, the state is the primary agent responsible for poverty relief, which is critical to its role of representing its people's united will and securing a public rightful condition for all. Together, these two points suggest that the poor are entitled to seek protection from poverty by appealing to the state for relief.

### 3.1 Enforcing Public Right

The previous chapter has shown that justification for the state's coercive powers is twofold: individuals seek security not only from the possibility that others may infringe on their freedom (negative external freedom), but also in enjoying equal protection for their rights to freedom (positive external freedom).<sup>102</sup> In this section, I argue that for Kant, the state is best understood as an agent of its people's united will. This interpretation of the state is based on the idea that coercive state authority cannot be justified as being merely instrumental to achieving particular ends (even if such an end is perfect justice). Rather than a powerful or benevolent source of universally advantageous rights, I suggest that the state is an agent through which the collective freedom of its citizens can be secured.<sup>103</sup> This view of the state is illustrated by Kant's idea of the original contract and supported by his emphasis on the importance of a republican state.

To begin with, the state's coercive authority is "a self-contained issue" that does not depend for its justification on external factors or potential consequences.<sup>104</sup> The state's coercive system of equal freedom is non-instrumental; it provides only the formal conditions for public right and does not represent any particular or material objectives. Kant rejects any 'material' principle of right which depends on the substantive ends that persons and states may have, since this can only generate material and conditional rules

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<sup>102</sup> Ripstein, 217.

<sup>103</sup> Höffe, "The Dilemma of Natural Justice," 140.

<sup>104</sup> Ripstein, 9-10.

which are neither necessary nor sufficient for the security of right.<sup>105</sup> The instrumental view of the state assumes that it aims to attain some desirable outcome(s), which may in principle be achieved by some other means.<sup>106</sup> For instance, to assert that the state's role is to accumulate material wealth within a community is to also concede that the state is unnecessary, since material wealth may be accumulated through private savings and other means that do not require state action. The instrumental view faces "a special burden of justification,"<sup>107</sup> because the state's coercive authority over its people is theoretically unnecessary in achieving any particular aims. A stronger objection to the instrumental state is that the pursuit of particular purposes is tyrannical, since it represents an imposition of substantive purposes on all citizens, including those who have not chosen them.<sup>108</sup> In this case, the state's coercive authority violates the innate rights of citizens to freely set and pursue their own ends.

In contrast to the instrumental view, I argue that the state is better understood as an agent through which the mutual sacrifice of various freedoms is precisely defined and delimited.<sup>109</sup> The universal principle of right, which is that "[a]ny action is right if it can coexist with everyone's freedom in accordance with a universal law,"<sup>110</sup> implies that the state's monopoly on

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<sup>105</sup> Ibid., 13.

<sup>106</sup> Ibid., 9-10.

<sup>107</sup> Ibid., 9-10.

<sup>108</sup> A possible objection may be made in consideration of the possibility that all citizens endorse the same particular end. However, this objection is problematic since such congruence between the particular ends of the state and of the people is merely incidental, and the theoretical incompatibility between the state's setting of particular ends and the capacity of the people to have myriad different ends still stands. See Michael Oakeshott's distinction between civil and enterprise associations in *On Human Conduct* (Oxford: Oxford University Press, 1975).

<sup>109</sup> Höffe, "The Dilemma of Natural Justice," 140.

<sup>110</sup> Kant, "The Metaphysics of Morals," 387 (6:230).

coercion is just only if it respects each citizen's innate right to freedom. In other words, the state's coercive authority is legitimate only if it could be consistent with each person's entitlement to freely set and pursue his or her own ends.<sup>111</sup> This suggests that the state's lawmaking capacity is just that of its people giving laws to itself.<sup>112</sup> Therefore, the state may only make laws that the people could possibly consent to and impose on themselves. It may not treat any person as a mere means, or limit his or her purposiveness for the pursuit of particular goals such as economic prosperity. No one could consent to the former since it involves giving up one's freedom and personhood (and therefore also the capacity to consent to anything), while the latter involves the subjugation of a people's freedom to particular purposes that are merely private, no matter how common or widely shared they happen to be.<sup>113</sup> The state is entitled to act coercively only to reconcile the freedom and purposiveness of all citizens, and not to impose material and particular ends on them or violate any one of their rights. This is because the state's coercive authority is justified not as a mere means for achieving independently desirable outcomes, but as an intrinsically necessary mechanism of public right.<sup>114</sup>

Ultimately, the state and its people are mutually constitutive, since the former is an agent for and thereby also creates the people "as a moral subject to whom its acts can be imputed,"<sup>115</sup> by vesting individual citizens with collective moral

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<sup>111</sup> See Ripstein, x-xi. Ripstein describes this entitlement to freedom as the right to be one's own master.

<sup>112</sup> Ripstein, 206. See also Sharon Anderson-Gold, "Crimes Against Humanity," in *Autonomy and Community: Readings in Contemporary Kantian Social Philosophy*, edited by Jane Kneller and Sidney Axinn (Albany: State University of New York Press, 1998), 109.

<sup>113</sup> Sharon Anderson-Gold, "Crimes Against Humanity," 207.

<sup>114</sup> Ibid., 268.

<sup>115</sup> Ripstein, 195.



agency. The state bases its legitimacy on the united will of its people, which is itself an idea of reason expressing a strictly formal condition for the exercise of state power: laws instituted by the state can only be made binding on the people if it could in principle be the object of agreement among them and consistent with their individual rights.<sup>116</sup> Only autonomous, self-imposed laws could be legitimate, since the rational principle of non-contradiction demands that I obey only such laws—given my innate freedom, I cannot be bound by laws I could not freely will. Therefore, political freedom can be considered a necessary precondition for any legitimate system of laws.<sup>117</sup> Furthermore, the state has no agency independent of the people, since all that it provides is a framework through which laws can be made, applied, and enforced by and for the people.<sup>118</sup> Acts of the state can therefore be considered ‘public’ or ‘of the people’, insofar as they are exercised on behalf of the citizens considered as a single agent.”<sup>119</sup>

Accordingly, the idea of the original contract—whereby individual citizens ‘agree’<sup>120</sup> to be bound by laws they give themselves as a people—represents the unifying principle and sole terms on which the legitimacy of the state, as a public institution, may be understood.<sup>121</sup> The original contract is the ‘act’ by which a mere aggregation of individuals becomes a collective body under the state,<sup>122</sup> although Kant explains that it need not be an actual historical event.<sup>123</sup> Instead, the original contract constitutes the normative framework under

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<sup>116</sup> Ibid., 277.

<sup>117</sup> Rosen, 62.

<sup>118</sup> Ripstein, 196.

<sup>119</sup> Ibid., 196.

<sup>120</sup> I later explain how this kind of agreement is a purely formal concept.

<sup>121</sup> Ripstein, 273.

<sup>122</sup> Ibid., 194-95.

<sup>123</sup> Kant, “On the Common Saying,” 296-97 (8:297).

which individuals may relinquish their “wild, lawless freedom in order to find [their] freedom as such undiminished in a dependence upon laws” that arise from their own lawgiving will.<sup>124</sup> There are indeed significant difficulties in using actual or hypothetical (concerning ideal rational agents) consent as a criterion of justice.<sup>125</sup> As a result, the contractual basis for the state is at best a purely formal criterion of justice, based on actual agents’ *possible* consent to the state’s constitution.<sup>126</sup> In other words, the original contract is a purely formal idea of reason that endows private individuals with a public dimension, by enabling them to collectively make and submit to laws as a united people.

Because the state is ultimately an instrument which channels and acts on the united will of the people, the legitimacy of its constitution depends on the possibility of universal consent from the people, which in turn requires the people to first be individually and collectively free.<sup>127</sup> The state must regulate private right and secure each citizen’s freedom, equality and independence through institutions that sustain public rightful conditions under which individual freedoms can be governed by universal law.<sup>128</sup> The state not only provides the normative framework under which its citizens can make and submit to laws as a single people, but also secures public right by enforcing

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<sup>124</sup> Kant, “The Metaphysics of Morals,” 458-59 (6 :315-16).

<sup>125</sup> See Onora O’ Neill, “Between Consenting Adults,” in *Constructions of Reason* (Cambridge: Cambridge University Press, 1990), 105-125.

<sup>126</sup> Onora O’ Neill, “Kant and the Social Contract Tradition,” in *Kant’s Political Theory*, edited by Elisabeth Ellis (University Park: Penn State University Press, 2012), 25-41.

<sup>127</sup> *Ibid.*, p. 33. I agree with O’Neill, who proposes that any state whose constitution meets this formal criterion of justice—i.e. a constitution that *could* secure universal consent from all citizens—must meet three criteria. First, individual citizens must be free in order to be capable of genuine consent (or dissent). Second, all individuals must share a common dependence on or subordination to law. Third, citizens must enjoy legal equality under the constitution. The second and third criteria together ensure the possibility of universal consent by guaranteeing the *collective* freedom of all citizens.

<sup>128</sup> Helga Varden, “Kant’s Non-Absolutist Conception of Political Legitimacy – How Public Right ‘Concludes’ Private Right in the “Doctrine of Right”,” *Kant-Studien* 101, no. 3 (2010): 336.

these public laws<sup>129</sup> to make determinate a binding framework of civil interactions.<sup>130</sup> The state's monopoly on coercion thus creates a dependency relation between the state and its citizens, where collective freedom and individual freedoms are mutually sustained.

However, Kant also argued that because the self-seeking nature of human beings poses a challenge to the institution of public right, the people's sovereignty is best represented and protected by a republican separation of powers. He explains that the united will consists of "three persons," and there are likewise three authorities within the state: "the *sovereign authority* (sovereignty) in the person of the legislator; the *executive authority* in the person of the ruler (in conformity to law); and the *judicial authority* (to award to each what is his in accordance with the law) in the person of the judge."<sup>131</sup> The republican state—characterized by the sharing of power between the legislative, executive and judicial branches—mitigates the problem of human selfishness by "arranging those forces of [human] nature in opposition to one another in such a way that one checks the destructive effect of the other or cancels it."<sup>132</sup> The republican constitution is therefore a mechanism by which citizens can be externally compelled as a united people to act in compliance with right.

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<sup>129</sup> Kant's "axiom of law" provides us with a starting point for thinking about individuals in rightful relation to one another. It posits that each individual has a duty to "[b]e an honorable human being" by not making himself or herself a mere means for others but instead an end for them, as an "obligation from the right of humanity in our own person". See Byrd and Hruschka, 82-83; and Kant, "The Metaphysics of Morals," 392 (6:236).

<sup>130</sup> Ripstein, 224-225.

<sup>131</sup> Kant, "The Metaphysics of Morals," 457 (6:313).

<sup>132</sup> Immanuel Kant, "Toward Perpetual Peace," in *Practical Philosophy*, translated and edited by Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 335 (8:366).

The republican state ensures the authority of universal law through non-contingent and symmetrical restrictions on the freedom of all citizens,<sup>133</sup> thus enabling even a non-virtuous citizenry to govern itself according to the principle of right.<sup>134</sup> The republican separation of powers between the legislative, executive and judicial branches therefore completes the specification of independence between persons.<sup>135</sup> While the innate right to freedom and the private right to property are merely provisional, human beings can finally be secure in these rights when they enjoy conclusive public right under a republican state. Furthermore, the state may legitimately speak and act for all citizens across time because the state's agency represents that of its people as a collective unity. The state must therefore be regarded as existing in perpetuity<sup>136</sup> insofar as its representational form endures. Consequently, all citizens are bound to respect the state's authority even when the specific compositions of the citizenry and the government change. In short, the state is a normative system of public right that is authoritative insofar as it provides the formal conditions for its citizens to act freely and cooperatively on their united will.

### 3.2 The Right to Relief

Given Kant's conception of the state, the poor do not have a right to relief just because they might otherwise die. In the first place, private right protects each

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<sup>133</sup> Helga Varden, "Kant's Non-Absolutist Conception of Political Legitimacy – How Public Right 'Concludes' Private Right in the "Doctrine of Right"," *Kant-Studien* 101, no. 3 (2010): 338.

<sup>134</sup> Shell, 162.

<sup>135</sup> Ripstein, 14.

<sup>136</sup> *Ibid.*, 272-73.

person's purposiveness only in terms of the things he or she already possesses and does not extend to things a person may need, even those necessary for survival.<sup>137</sup> There is no duty of innate or private right to make one's external things available for others to use,<sup>138</sup> and others' lack of external things (which they may want or need) is merely factual rather than intrinsically wrong.<sup>139</sup> Right has to do only with the relation of choice between individuals and considers neither wish nor need,<sup>140</sup> which are inherently internal to their subject and do not have any external existence which could legally oblige another.<sup>141</sup> There is no such thing as a right to private charity because each is entitled to set and determine the pursuit of his or her own ends, and does not wrong those in need by failing to help them. Persons suffering from poverty are therefore dependent on the charity of other private persons despite the lack of a private duty to rescue.<sup>142</sup>

I contend that the state's duty to support the poor can only be justified in terms of the state's integral role in preserving a public rightful condition for its people.<sup>143</sup> The minimum prerequisite for citizenship in the state is the capacity to partake in the original contract established by the united will of all. One can be a party to the contract only because one already possesses innate and private rights as a person, since these rights are subsequently vested—in conjunction with other individuals—in the state.<sup>144</sup> Poverty in a civil condition negates this prerequisite of dignified personhood and presents the state with a

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<sup>137</sup> Ibid., 275.

<sup>138</sup> Kant, "The Metaphysics of Morals," 387 (6:230).

<sup>139</sup> Ripstein, 277.

<sup>140</sup> Kant, "The Metaphysics of Morals," 387 (6:230).

<sup>141</sup> Weinrib, "Law as Idea of Reason," 25.

<sup>142</sup> Ibid., 276.

<sup>143</sup> Ripstein, 270.

<sup>144</sup> Kant, "The Metaphysics of Morals," 471-72 (6:329-30).

logical contradiction. The poor, whose basic survival is completely dependent on the discretionary choices of those who have more, are essentially bound to a contract that institutionalizes their loss of personhood. One could not possibly choose to bind oneself to a condition of dependence<sup>145</sup> or to submit to an authority that entrenches one's loss of freedom. As mentioned in the previous section, one must first be free before one can be a legitimate subject of the state's coercive authority.<sup>146</sup> The poor cannot then qualify as parties establishing the state; and the state's coercive authority is no longer truly public or legitimate when exercised for purposes that the poor could not share. Excluded from a public rightful condition, the poor are forced to protect themselves by exercising their provisional private rights, but this is inconsistent with a public rightful condition. Poverty effectively renders the rich and poor incapable of sharing in a united will that is necessary for all to be bound by public right.<sup>147</sup> Therefore, the state is required to support the poor in order to protect public right and secure the people's collective freedom.<sup>148</sup>

I argue that one specific duty of the state—as an institution of public right—is to guarantee *all* citizens unconditional relief from poverty, which undermines public right. Poverty deprives its sufferers of the capacity to exercise free choice, without which they could not possibly consent and be subjected to legitimate coercion under the state, and are therefore excluded from a public rightful condition. The poor are essentially deprived of the freedom that enables them to share in the united will that grounds the legitimacy of the state's coercive authority. In this case, the incapacity to share in the united will

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<sup>145</sup> Ripstein, 26.

<sup>146</sup> Ibid., 286.

<sup>147</sup> Ibid., 274.

<sup>148</sup> Ibid., 271-72.

demonstrates poverty's debilitating effects not only on individual freedom but also collective freedom under the state. Under these circumstances, the poor are not bound by the state's laws, since the state is not for them a source of legitimate coercion. The poor are therefore in a state of nature in relation to the state and their fellow citizens, and are entitled to self-preservation by exercising their provisional private rights. This fundamentally threatens public right and collective freedom, which depend on the subjection of *all* citizens to universal reciprocal coercion. Ironically, even the wealthy cannot be secure in their property rights as long as the threat of poverty remains. Public right is jeopardized as long as any citizen (rich or poor) *could* find himself divested of the capacity for free choice, without any guaranteed public avenue for relief. Therefore, to preserve public right, I propose that the state must secure all citizens from the threat of poverty. Failure to do so would mean that the state and its coercive authority are not truly public and therefore illegitimate, since they serve only private interests (namely those of the wealthy, who have an interest in securing their property).

Although my argument for relief is based on Kant's ideas, I go further than he does. Kant does not defend a duty of the state to provide for the poor, even though he does support the state's right to take resources from the wealthy.<sup>149</sup> The latter depends on the idea that the state is not a private party in relation to its citizens but an agent of their united will. Kant's view contrasts with the Lockean one, in which ownership is a right based on causation, and the entitlement of persons to external things is based on their labor in creating or

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<sup>149</sup> See Baiasu, 22.

acquiring these objects.<sup>150</sup> Locke considers the state to be a private party in relation to its citizens, where the state has a causal role in producing all wealth and thus also absolute dominion over its assets and how they are to be disposed of.<sup>151</sup> However, for Kant, persons are entitled to external objects as instruments for exercising their innate freedom, simply by being the first to take these into their own possession and subsequently obliging all others to refrain from using them.<sup>152</sup> Each person is a private party with the innate human right to freedom and the private right to property, yet these rights are merely provisional and become conclusive only under a public rightful condition. The state provides security for individual rights in a collective setting, where the “general will of the people has united itself into a society which is to maintain itself perpetually; and for this end it has submitted itself to the internal authority of the state in order to maintain those members of the society who are unable to maintain themselves.”<sup>153</sup>

The collective dimension of the state’s public authority may explain how the state can take from the wealthy and give to the poor without wronging the former, but it does not explain how the state can justifiably *choose* to do so. This justificatory gap in Kant’s arguments is especially pronounced in view of his emphatic claim that the state has no duty of beneficence or benevolence to its citizens. Kant maintains that the state’s sole duty is to ensure public rightful relations between free individuals, and “a paternalistic government... is the greatest despotism thinkable” because it imposes on citizens the particular

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<sup>150</sup> See John Locke, *Two Treatises of Government*, edited by Peter Laslett (Cambridge: Cambridge University Press, 1988), section II.

<sup>151</sup> Ripstein, 270 (footnote).

<sup>152</sup> Kant, “The Metaphysics of Morals,” 405-6 (6:247-51).

<sup>153</sup> Kant, “The Metaphysics of Morals,” 468 (6:325-26).



(private) end of happiness.<sup>154</sup> The independence of Kant's arguments for poverty relief from material considerations ultimately rests on the distinction he makes between right and virtue.<sup>155</sup> Since right concerns only the relation of choice between persons, actions that cause harm or fail to confer a benefit on another person may affect that person's means, but such actions are not inherently wrong because they do not interfere with his or her freedom to determine how these means are to be used. For example, contributing to Napoleon's college fund enhances the means at his disposal to pursue his academic goals, but this has no effect on his capacity to decide what to do with these means. Kant does not consider material inequality in itself a concern for the state, so this raises the question of how he can justify poverty relief as a relevant concern for the state even if he can justify taxing the wealthy for these purposes.

Despite Kant's lack of development on this question, his vehement rejection of welfare or happiness as a ground for state legislation does not necessitate a libertarian conception of the state. In fact, I argue that Kant's ideas are hospitable to considerations of socio-economic inequality, but only because such inequality threatens public right.<sup>156</sup> Specifically, the state's role in securing public right is fully consistent with and even necessitates a well-developed framework of social welfare (albeit not for the sake of welfare itself).<sup>157</sup> The state may concern itself only with legal equality among citizens

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<sup>154</sup> Kant, "On the Common Saying," 290-91 (8:290-91); see also Allen Wood, *Kantian Ethics* (Cambridge: Cambridge University Press, 2008), 194.

<sup>155</sup> Ripstein, 269.

<sup>156</sup> In contrast, Kleingeld (143) considers the state responsible for mitigating inequality and its negative effects.

<sup>157</sup> For a further discussion on the necessity of social welfare in the Kantian state see Kaufman, 5-8.

but,<sup>158</sup> in practice, legal and material equality are not mutually exclusive. Kant requires that right regulate external acts but not the choice of ends. This implies that the state may not adopt legislation that imposes particular ends on the people, although it may adopt legislation that merely regulates external acts and are *incidentally* designed to realize ends.<sup>159</sup> Much of the literature on Kant's ideas concerning poverty focuses too narrowly either on the structural preservation of public right or on poverty and welfare as material concerns, and many scholars have failed to recognize that these are not mutually exclusive.<sup>160</sup> The key factor relating these concerns is the simultaneously intelligible and material nature of human beings. Persons require adequate resources to exercise their capacity for external freedom, without which they cannot be free parties to a public rightful condition.<sup>161</sup> Because security from poverty is necessary to preserve the united will that establishes public right, the state's duty to preserve public right manifests as a duty of relief—a duty of justice which is conceptually distinct from but has the same practical effects as an ethical duty of beneficence.<sup>162</sup>

Libertarian Kantians interpret the state's duty to its citizens "solely as a duty to prevent force and fraud," but other kinds of Kantians argue that "these duties are flexible, sensitive to circumstance and concerned with the fundamentals prerequisite to citizenship and agency."<sup>163</sup> It is true that "social

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<sup>158</sup> Höffe, "The Dilemma of Natural Justice," 153.

<sup>159</sup> Kaufman, 20-21.

<sup>160</sup> For instance, see Williams, *Kant's Political Philosophy*, 194; and Wood, 196.

<sup>161</sup> Varden, "Kant's Non-Absolutist Conception of Political Legitimacy—How Public Right 'Concludes' Private Right in the "Doctrine of Right"," 344.

<sup>162</sup> On the contrary, Rosen (see 179) and Penner (see 104) argue that the duty of relief is one of beneficence.

<sup>163</sup> Sarah Holtman, "Kantian Justice and Poverty Relief," *Kant-Studien* 95, no. 1 (2004): 106. A discussion of the libertarian interpretation can be found in Chapter 5 of Rosen, *Kant's Theory of Justice*. Some examples of philosophers taking the libertarian route are Bruce Aune,

contract reasoning” and the state’s role in preserving public right never justify any particular positive laws such as taxing the wealthy to support the poor.<sup>164</sup> However, I argue that while the state’s duty to its citizens is solely to preserve a coercive system of public right, fulfilling this duty incidentally necessitates meeting the material conditions under which all citizens could freely consent and subject themselves to the state’s authority.

In the first place, citizens may be unequal in various ways, yet all are equal as subjects of the state. Kant distinguishes between active and passive citizens, where the latter includes women and servants, and only the former has political freedom and voting rights based on their property qualifications.<sup>165</sup> However, he also maintains that all citizens (‘the people’) are nevertheless entitled to civil rights, freedom and legal equality as human beings. This equality implies that “no one of them can coerce any other except through public law (and its executor, the head of state), through which every other also resists him in like measure.”<sup>166</sup> More importantly, no one can lose this authoritative right against others except by his own crime;” he cannot choose to rescind it “by a contract, and so bring it about by a rightful action that he has no rights but only duties; for he would thereby deprive himself of the right to make a contract and thus the contract would nullify itself.”<sup>167</sup> The social contract therefore serves as a formal test of unjust laws; a contract which deprives some individuals of their rights is something that an entire people

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*Kant's Theory of Morals* (Princeton, NJ: Princeton University Press, 1979), 156-60; Murphy, 144-46; and Williams, *Kant's Political Philosophy*, 195-98.

<sup>164</sup> Penner, 90.

<sup>165</sup> Kant, “The Metaphysics of Morals,” 458-59 (6:314-15). See also Rosen, 14, and Seyla Benhabib, “The Philosophical Foundations of Cosmopolitan Norms,” in *Another Cosmopolitanism*, edited by Robert Post (Oxford: Oxford University Press, 2006), 13-44.

<sup>166</sup> Kant, “On the Common Saying,” 292 (8:291-92).

<sup>167</sup> *Ibid.*, 292 (8:291-92).

could not agree to because it would contradict the right to freedom of those who would thereby be disadvantaged.<sup>168</sup>

Consequently, the state is responsible for relieving poverty because the state is not merely unjust but effectively illegitimate when it fails to provide for the poor. Because the poor lack autonomy and could not possibly consent to the social contract establishing the state, they are neither protected nor bound by the obligations of public right.<sup>169</sup> As a result, the poor can and must resort to exercising their private individual rights to preserve themselves, even if this violates public right. This means that even the wealthy can only be secure in their property rights when the rights of all citizens are protected. The wealthy and poor alike thus depend on the state to protect their rights,<sup>170</sup> and poverty relief is essential to the state's role of preserving public right as a mechanism of social cooperation and universal reciprocal coercion. Without institutionalizing and guaranteeing unconditional poverty relief for all citizens, the state is not legitimate and political obligations do not exist.<sup>171</sup>

Evidently, the state's duty of relief is not a matter of benevolence, charity, or virtue, but an obligation of the state to secure justice for all citizens as free and equal members of a just society.<sup>172</sup> Kant opposes paternalism, happiness and welfare as valid principles of legislation.<sup>173</sup> The provision of welfare could not in itself be a duty for the state because like illness, "poverty is a misfortune

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<sup>168</sup> Rosen, 134-36.

<sup>169</sup> Ibid., 17.

<sup>170</sup> See Kaufman, 33-34; Holtman, 90; and Penner, 104.

<sup>171</sup> Varden, "Kant's Non-Absolutist Conception of Political Legitimacy—How Public Right 'Concludes' Private Right in the "Doctrine of Right"," 346.

<sup>172</sup> Holtman, 106.

<sup>173</sup> I therefore disagree with Rosen's argument (see 179) that a contradiction between Kant's arguments for poverty relief and his opposition to paternalism and welfare as valid principles of legislation is apparent only in *On the Common Saying*, and that Kant later reconciles these ideas in the *Metaphysics of Morals*.

which one may bemoan but not rightfully protest.”<sup>174</sup> The state’s duty is primarily to secure public right, so it cannot be held responsible for relieving poverty on the basis of individual suffering alone.<sup>175</sup> Kant’s claim that inequality of wealth is consequent upon the injustice of the government suggests that the state is responsible for preventing or remedying general injustice,<sup>176</sup> but this claim does not depend on a conception of poverty as a standalone problem of suffering or inequality. The state has no business regulating economic inequality for the mere sake of its people’s welfare or happiness, although it must do so to ensure that all citizens have adequate resources to lead free and independent lives.

Rather than welfare or happiness, the public duty to support the poor is premised on the idea that the material aspect of human nature necessitates adequate material resources for one to exercise free choice, as a prerequisite for participation in a public rightful condition.<sup>177</sup> Poverty relief guarantees all citizens a right to exist and survive somewhere, and is necessary in ensuring that they are subject *only* to the laws of the state and receive adequate representation under its institutional framework.<sup>178</sup> Insofar as the state has adopted the task of protecting the people’s rights, it must intervene to eliminate oppressive economic conditions in order to preserve public right for

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<sup>174</sup> Shell, 186.

<sup>175</sup> Wood, 197.

<sup>176</sup> Ibid., 200.

<sup>177</sup> I disagree with Wood, (see 198) who considers the scope of economic redistribution or legitimate taxation to vary from generous to no support for the poor. Wood focuses on the social contract of the people in explaining the right to relief, and claims that because the content of agreement could technically vary, there are no specific material preconditions (namely adequate resources for its parties to exercise free choice) for this contract.

<sup>178</sup> Helga Varden, “Patriotism, Poverty, and Global Justice: A Kantian Engagement with Pauline Kleingeld’s Kant and Cosmopolitanism,” *Kantian Review* 19, no. 2 (2014): 259-60.

all.<sup>179</sup> Because the equal external freedom of individual citizens is necessary to realize a rightful civil condition,<sup>180</sup> the state must ensure that empirical conditions are not hostile to equality of freedom.<sup>181</sup> Poverty relief is not merely ideal<sup>182</sup> but necessary to preserve the institutional conditions of equal systemic freedom that must be met before political obligations can exist under public right and be secured by the state's coercive authority.

I argue that as a result, the state's 'minimal' duty to secure a public rightful condition must entail unconditional provision at the level of its citizens' most necessary natural needs. Kant's focus on "most necessary natural needs"<sup>183</sup> seems vague; it neither specifies the level of social provision, nor limits redistribution to what is necessary for biological survival.<sup>184</sup> Yet, this expresses Kant's recognition of the fact that poverty itself is not inconsistent with the rule of law, and that his arguments for relief as a matter of justice are of a formal and procedural rather than substantive nature.<sup>185</sup> Neither economic inequality nor the individual's need for subsistence is an independent concern for the state as an institution of justice,<sup>186</sup> although issues of economic justice and political legitimacy are inextricably related.<sup>187</sup> On the one hand, Kant's concern is solely to make possible a rightful condition, therefore he specifies only that provision to the poor is required at the level which preserves their

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<sup>179</sup> Kaufman, 30.

<sup>180</sup> Howard Williams, "Towards a Kantian Theory of International Distributive Justice," *Kantian Review* 15, no. 2 (2011): 55.

<sup>181</sup> However, I disagree with Kaufman's more extensive (and I think less defensible) claim that "equal opportunity to develop 'the capacity to set oneself an end'" is necessary for realizing a rightful condition (see 162).

<sup>182</sup> See Baiasu, 4.

<sup>183</sup> Kant, "The Metaphysics of Morals," 468 (6:325-26).

<sup>184</sup> Ripstein, 284.

<sup>185</sup> Penner, 101.

<sup>186</sup> Weinrib, "Poverty and Property in Kant's System of Rights," 821.

<sup>187</sup> Varden, "Kant's Non-Absolutist Conception of Political Legitimacy—How Public Right 'Concludes' Private Right in the "Doctrine of Right"," 350.

independence,<sup>188</sup> and cautions against “burdening the people with unnecessary costs.”<sup>189</sup> On the other hand, as long as any citizen (even one who is presently wealthy) *could* find himself impoverished with no public means of support,<sup>190</sup> his freedom is threatened by the possibility of dependence on the charity of private persons who are not obliged to help him. This is why the state’s responsibility to relieve poverty must be unconditional: the state’s role in securing public right implies that it must guarantee equal systemic freedom, which necessitates unconditional poverty relief to ensure that all citizens have the minimum resources required to preserve their independence. Although many states make their anti-poverty policies conditional, my argument shows how this cannot be consistent with the state’s role in securing public right.

To reiterate my argument, poverty relief is necessary for the preservation of public right because individuals need material resources in order to exercise their freedom, without which they could not be legitimate parties to and subjects under a rightful condition. Since the poor are essentially in a state of nature in relation to the people, they have no political obligations and cannot rightly be coerced to respect public laws. Even the mere possibility of poverty threatens public right because its sufferers are entitled to exercise private right against the people. However, the poor cannot be considered dependents of the state, nor does the state ‘owe’ them relief or welfare.<sup>191</sup> Rather, the state requires for its own preservation the freedom of all citizens from poverty, which jeopardizes the collective social cooperation necessary for public right to operate.

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<sup>188</sup> Ripstein, 284-85.

<sup>189</sup> Baiaxu, 7.

<sup>190</sup> Holtman, 103.

<sup>191</sup> Weinrib, “Poverty and Property in Kant’s System of Rights,” 817.

If the state's duty to support the poor is a matter of preserving public right, then this explains why Kant maintains that the state cannot do so by relying on voluntary contributions or assets accumulated by religious and other private institutions.<sup>192</sup> The state may not rely on private resources to support the poor, since these fail to address poverty as a public problem.<sup>193</sup> Poverty, which manifests as private dependence, is ultimately a public problem because it is institutionalized under the state and its creation of enforceable property rights. The state must secure relief for its citizens through public taxation rather than voluntary contributions,<sup>194</sup> since only the former constitutes an institutional solution to poverty that addresses it as an institutional problem that affects the capacity of citizens to participate in public right.<sup>195</sup> As mentioned, private right does not entitle one to means that are not already in one's possession, and there is no private obligation to support the poor except for the unenforceable duty of virtue to treat others' needs as one's own ends.<sup>196</sup> Voluntary private contributions are permissible and valuable, but these are separate from the state's relief efforts, which are distinctively public and coercive in nature.

Kant justifies coercive public taxation<sup>197</sup> to support the poor as a right of the state against the people.<sup>198</sup> The government is authorized to tax the wealthy to provide for the poor, because the wealthy owe the security and enjoyment of their rights (to their own persons, material resources, etc.) to the protection of

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<sup>192</sup> Kant, "The Metaphysics of Morals," 468 (6:325-26).

<sup>193</sup> Baiasu discusses "the difference between the private and civil condition and how the relation of dependence between persons changes from one condition to the other." (see 13).

<sup>194</sup> Varden, "Patriotism, Poverty and Global Justice," 259.

<sup>195</sup> Ripstein, 282.

<sup>196</sup> *Ibid.*, 26.

<sup>197</sup> See Brian Barry, "The Welfare State versus the Relief of Poverty," *Ethics* 100, no. 3 (1990): 503-29; for an example of a more detailed treatment of the features of state provision.

<sup>198</sup> Kant, "The Metaphysics of Morals," 468 (6:325-26).



the state, and are therefore obliged to support the state's duty to relieve fellow citizens.<sup>199</sup> Taxation is not justified as the imposition of limits on the right to pursue one's own ends.<sup>200</sup> Rather, it supports the freedom of taxpayers—whose acquisition and enjoyment of exclusive property rights must be authorized through public procedures that can be accepted by all—to ensure that their claim to exclude the poor from their property is not a unilateral imposition of force.<sup>201</sup> Taxing the wealthy to provide for the poor is just because it ensures that each is equal in her rights as a citizen, and that laws are mutually consistent in applying to all without needing to make equal demands on each citizen.<sup>202</sup> This is why the state must depend solely on public taxation “in such a way that the people taxes itself,” and “the only way of proceeding in accordance with principles of right in this matter is for taxes to be levied by those deputized by the people.”<sup>203</sup>

Ultimately, the state's duty to support the poor is a consequence of the obligatory movement from provisional right in the state of nature to public right under a civil condition, where the public institution of property rights is legitimate only when the poor are guaranteed relief.<sup>204</sup> Unconditional poverty relief is a necessary element of the state's duty to secure public right for its citizens, and the effect of welfare is merely incidental.<sup>205</sup> Since as private rights these measures would amount to the right to enslave others,<sup>206</sup> my interpretation of poverty relief exemplifies the idea that the state, as an

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<sup>199</sup> Ibid., 468 (6:325-26).

<sup>200</sup> See Rosen, 206.

<sup>201</sup> Ripstein, 283.

<sup>202</sup> Pogge, “Is Kant's *Rechtslehre* a ‘Comprehensive Liberalism?’” 137.

<sup>203</sup> Kant, “The Metaphysics of Morals,” 467 (6:325).

<sup>204</sup> See Weinrib, “Poverty and Property in Kant's System of Rights,” 800.

<sup>205</sup> Varden, “Kant's Non-Absolutist Conception of Political Legitimacy—How Public Right ‘Concludes’ Private Right in the ‘Doctrine of Right’,” 344.

<sup>206</sup> Ibid., 346.

institution of public right, is greater than the sum of its citizens' individual private rights. Even though I have supported Kant's justification for the state's duty of relief to the poor, states can and do fail to fulfill this duty. Given that the rightful beneficiaries of relief are individuals, not states, and that states have an enforceable right to tax the wealthy to relieve the poor within its borders, the next two chapters discuss further prospects for a duty of relief when states fail to relieve poverty within their own borders.

#### 4. International Right

Whether a state chooses not to provide relief or is simply incapable of providing it, the poor are excluded from a rightful condition. When the poor cannot be secure in their individual rights, this in turn undermines the state's capacity to secure public right for all citizens. The poor may seek to exit the state of nature by appealing to the state to protect their right to independence, or by forming or joining a separate legitimate state that provides such protection. The former may be ruled out when the state consistently fails to provide for its citizens' "most necessary natural needs"<sup>207</sup> and protect their rights. Although the state has a duty to relieve the poor, and an enforceable right to tax the wealthy for these purposes, it cannot be coerced into doing so. Despite the state's substantial duties of justice to its citizens, the latter may not forcibly demand that the state fulfill these duties.<sup>208</sup> The 'external' unenforceability of relief is perhaps why some scholars wrongly attribute an "ethical norm-giving" status to the duty of relief<sup>209</sup> and misconstrue it as a duty of beneficence.<sup>210</sup> There is no reason to suppose that Kant believed freedom, equality, independence or justice could be perfectly realized by actual citizens or societies, especially given his arguments for striving toward cosmopolitan society.<sup>211</sup> Although Kant does not address poverty relief in situations where states simply do not provide relief for their poverty-stricken

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<sup>207</sup> Kant, "The Metaphysics of Morals," 468 (6:325-26).

<sup>208</sup> Holtman, 90 (footnote).

<sup>209</sup> Baiausu, 18.

<sup>210</sup> See Pauline Kleingeld, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2012), 148; and Rosen, 173-208.

<sup>211</sup> Holtman, 97 (footnote). See Immanuel Kant, "Idea for a Universal History with a Cosmopolitan Purpose," in *Kant: Political Writings*, edited by H. S. Reiss and translated by H. B. Nisbet. (2nd ed.) (Cambridge: Cambridge University Press, 1991).

citizens, or in the supranational<sup>212</sup> context, I aim to demonstrate that it is possible to extend or replicate key elements of Kant's argument for domestic poverty relief in these settings.

Kant's discussion of right at the supranational level focuses on the rights of one state against another and on cosmopolitan right. There are (at least) two senses in which Kant uses the expression 'cosmopolitan right'. The first is formal and refers to universal right at the supranational level, whereas the second is substantive and refers specifically to the right to hospitality in terms of private-public relations across state boundaries (e.g. relations between state A and citizens of state B). These differences appear to be theoretically consistent in Kant's writings.<sup>213</sup> In this chapter, I focus on the formal sense of cosmopolitan right in determining the nature of and conceptual limitations to right at the supranational level. I examine the prospects for supranational right, and argue that right outside the domestic context is unenforceable and therefore merely provisional in the absence of a coercive international order. A unique challenge to the institution of international public right is that there are both individual and state agents to account for.<sup>214</sup> States are fundamentally unlike individuals in that they are defined by domestic public rightful conditions and cannot simply subject themselves to external institutions of public right, which could potentially conflict with their duty to secure their peoples' rights.<sup>215</sup> This means that public right at the domestic level is an

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<sup>212</sup> I use the term 'supranational' to mean 'outside the state'. My usage of other terms describing cross-border relations includes 'international', meaning 'between states'; and 'transnational', meaning 'between private parties in different states'.

<sup>213</sup> See Kleingeld, 70-71.

<sup>214</sup> Varden, "A Kantian Conception of Global Justice," 2050.

<sup>215</sup> I propose that arguments supporting international redistribution in Kant's political philosophy (see, for instance, Onora O'Neill, *Faces of Hunger: An Essay on Poverty, Justice and Development* (London: G. Allen & Unwin, 1986); and Williams, "Towards a Kantian

obstacle to the institution of public right at the supranational level. Consequently, the argument for enforceable domestic poverty relief—by means of redistribution from the rich to the poor—does not have an equivalent analogy at the supranational level.

This sets up the following chapter's discussion of the cosmopolitan right to hospitality and its implications on the issue of poverty, where I argue that poverty relief at the supranational level can nevertheless be justified in terms of provisional right. Kant's discussion of these two senses of cosmopolitan right is not directly relevant to the challenge of protecting the poor, who are essentially 'stateless' to the degree that they are excluded from a rightful condition. Although states have no obligation (whether enforceable or unenforceable) of right to redistribute resources to impoverished foreigners, the cosmopolitan right to hospitality suggests that states can turn visitors away only if they have a rightful condition to return to. Therefore, I argue that states must welcome economic refugees—who have no rightful condition to return to and would otherwise be destroyed in the state of nature<sup>216</sup>—as long as these persons are willing to abide by local laws. My argument is limited to economic refugees understood in this sense as persons who do not enjoy protection under a civil rightful condition. The poor may therefore seek refuge in a foreign state, where they are entitled to temporary protection from the state of nature and have the possibility of gaining citizenship and entering a civil rightful condition.

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Theory of International Distributive Justice", 43-77.) face this (as I argue later in this chapter) logically insurmountable justificatory obstacle, but to retain the focus on my own argument I will not address each of these in turn.

<sup>216</sup> Kant, "Toward Perpetual Peace," 329 (8:358).

I first examine the prospects for enforceable rights outside the domestic state by analyzing Kant's discussion of international right and evaluating the plausibility of an international or universal rightful condition. Rights at the supranational level remain merely provisional until there is "a universal *association of states* (analogous to that by which a people becomes a state)" with organizational and coercive structures like those of the state, under which public international rights can come to hold conclusively.<sup>217</sup> States are in a condition of nature and lack enforceable obligations to one another in the absence of an overarching sovereign. Although Kant doubts that a universal or world state could secure those rights because governing and protecting each member would be impossible over such vast regions,<sup>218</sup> he also rejects multiple super-states on the basis that these "would again bring on a state of war."<sup>219</sup> Ultimately, I argue that a universal state or international super-state is conceptually impossible. A national state—whose fundamental role is to secure a public rightful condition for its citizens—cannot justifiably entrust the security of its people to a universal state. A universal state, whose primary role is to secure public right for the universal community, could not prioritize the rights of a single people in the same way that a national state could. A national state also cannot subject itself to a sovereign international super-state that could exercise its authority in ways that conflict with a particular nation's rights. This implies that public right in the supranational context is theoretically impossible, and any cross-border duty or right to relief is at best provisional.

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<sup>217</sup> Kant, "The Metaphysics of Morals," 487 (6:350).

<sup>218</sup> Kant, "On the Common Saying," 307-8 (8:309-13).

<sup>219</sup> Kant, "The Metaphysics of Morals," 487 (6:350).

#### 4.1 Why Do We Need Rights Beyond the State?

Kant identifies two conditions under which there is a rational need for some form of supranational right. First, because the earth's geographical space is finite, human beings must live in proximity with one another. Second, such proximity makes interactions between people inevitable and increases the chances for conflict between them. Kant states that human beings have "the right of possession in common of the earth's surface on which, as a sphere, they cannot disperse infinitely but must finally put up with being near one another."<sup>220</sup> If the earth's surface were infinite, everyone could claim as much land as they wanted. If land were infinitely abundant, everyone's territorial claims would be unconditionally compatible (i.e. compatible regardless of the magnitude of these claims). However, because the earth's space is finite and scarce, territorial claims are accompanied by the risk of conflict since individuals and states may stake contradictory claims. Spatiotemporal constraints therefore imply that the right to external objects consists in a relation between subjects, where finite empirical reality sets the limits within which human beings are constrained to establish rightful relations.<sup>221</sup> This is a zero-sum game where any territorial claim—no matter how small—would necessarily reduce the amount of territory for others to claim.

Natural law theorists such as Grotius argue that division is necessary before ownership is possible, because God first gave the land to humankind in common. In contrast, Kant reasons from the fact of individual acquisition to

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<sup>220</sup> Kant, "Toward Perpetual Peace," 329 (8:358).

<sup>221</sup> Flikschuh, 133.

the idea of original possession in common.<sup>222</sup> Human beings possess a collective right to possession of the earth,<sup>223</sup> because they are equally entitled to occupy space on the earth and potentially affect one another when it comes to occupying physical space. They are forced to interact and share the limited physical space available on the earth<sup>224</sup> because the occupancy of space is exclusive. In the absence of a rightful condition, the interaction between persons would take place in the state of nature, which is characterized by the constant threat of war and conflict. Like human beings, states are—by virtue of their moral personality—also in a condition of nature with respect to one another.<sup>225</sup> States in this condition of juridical lawlessness and war “already wrong one another by being near one another”<sup>226</sup> and are therefore obliged to leave this condition of natural freedom.<sup>227</sup> To willingly be or remain in such a condition is “wrong in the highest degree”<sup>228</sup> because this contradicts the possibility of being governed by right, thereby denying the validity of the principle of right and subverting the innate human right to freedom.<sup>229</sup> States are therefore obliged to leave the condition of nature and organize themselves in accordance with the idea of the original contract.<sup>230</sup>

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<sup>222</sup> Flikschuh, 151-52.

<sup>223</sup> Kant, “Toward Perpetual Peace,” 329 (8:358).

<sup>224</sup> Elisabeth Ellis argues that the central role of this empirical observation about the nature of political reality in Kant’s theory of cosmopolitan right is in tension with his “philosophical commitment to formal principles (that is, to the exclusion of empirical examples, which are necessarily particular, and this weakens grounds for legitimation).” (See *Kant’s Politics: Provisional Theory for an Uncertain World* (New Haven, CT: Yale University Press, 2005), 123.) However, I contend that the material and spatial aspects of the human experience are neither merely empirical nor particular; the duality of human nature (being fundamentally intelligible *and* empirical) is a conceptual cornerstone of Kant’s political philosophy.

<sup>225</sup> Kant, “The Metaphysics of Morals,” 482 (6:343).

<sup>226</sup> Kant, “Toward Perpetual Peace,” 325-26 (8:354).

<sup>227</sup> Kant, “The Metaphysics of Morals,” 482-83 (6:344).

<sup>228</sup> *Ibid.*, 452 (6:308).

<sup>229</sup> Varden, “A Kantian Conception of Global Justice,” 2048.

<sup>230</sup> Ripstein, 226.



Evidently, public right—“the sum of the laws which need to be promulgated generally in order to bring about a rightful condition”—serves an important role at various levels.<sup>231</sup> Constituting the legal framework which supports a rightful condition, public right is “*a system of laws for a people, that is, a multitude of human beings, or for a multitude of peoples, which, because they affect one another, need a rightful condition under a will uniting them, a constitution,*” so that all may enjoy what has been established as right.<sup>232</sup> Considering that agents (whether individuals or states) affect one another, the institution of public right is critical to a rightful condition at three different levels: the state, relations between states, and states as members of a larger confederation.

The first involves individuals living under the coercive authority of a state. “This condition of the individuals within a people in relation to one another is called a *civil* condition (*status civilis*), and the whole of individuals in a rightful condition, in relation to its own members is called *a state* (*civitas*).”<sup>233</sup> This civil condition comes about when individuals submit to the coercive authority of a state, which makes possible a rightful condition. The state is endowed with moral personality, conceived in terms of the collective agency of its citizens; since the duty and role of the state is to represent the united will of its people. The ‘right of a state’ therefore refers to civil order and public right between citizens who live together in a civil condition under the coercive authority of the state. The state’s actions can also be considered expressions of the right of a state where the state acts on the united will of its citizens. The

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<sup>231</sup> Kant, “The Metaphysics of Morals,” 455 (6:311).

<sup>232</sup> Ibid., 455 (6:311).

<sup>233</sup> Ibid., 455 (6:311).

right of a state encompasses territorial integrity and security, as well as political and cultural self-determination.”<sup>234</sup>

The state provides a domestic rightful condition for its people, but in relation to other states it is in a condition of nature. In this context, the ‘right of nations’ or the ‘right of states’ (the term Kant considers to be more accurate<sup>235</sup>) refers to the right of states to engage one another on the basis of commonly agreed regulations.<sup>236</sup> The right of states is the second form of public right, which governs relations between states according to rules of inter-state conduct. When expressed as positive law, the basis of these rules is the treaties or customs to which states consent, whether tacitly or expressly, to submit. The content of these rules “consist... partly of their right *to go to war*, partly of their right *in war*, and partly of their right to constrain each other to leave this condition of war and so form a constitution that will establish lasting peace,” or “right *after war*.”<sup>237</sup> The right of states does not exclude the right to resort to unilateral force; there is no overarching enforcement authority to secure the rights of all, therefore each is entitled to secure them for itself.<sup>238</sup>

In contrast to the right of states, public right at the third level is conclusive because it is enforceable under the authority of a supranational sovereign. Kant explains that since “the earth's surface is not unlimited but closed, the concepts of the right of a state and of a right of nations lead inevitably to the idea of a *right for a state of nations (ius gentium)* or *cosmopolitan right (ius*

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<sup>234</sup> Höffe, *Kant's Cosmopolitan Theory of Law and Peace*, 194.

<sup>235</sup> Kant, “The Metaphysics of Morals,” 482 (6:343–44).

<sup>236</sup> See Brian Orend, “Kant’s Just War Theory,” in *Kant and Law*, edited by B. Sharon Byrd and Joachim Hruschka (Aldershot, UK: Ashgate, 2006), 418, for a list of condensed propositions representing Kant’s ideas relating to just war.

<sup>237</sup> Kant, “The Metaphysics of Morals,” 482 (6:343–344).

<sup>238</sup> Shell, 174.

*cosmopoliticum*).<sup>239</sup> The need to share physical space on the earth and the accompanying threat of conflict can be fully mitigated only by an overarching sovereign with the authority to make and enforce judgments on conflicting claims. States finally leave the condition of nature when they create and enter an association of states “analogous to that by which a people becomes a state;” this establishes conclusive international “right for a state of nations or cosmopolitan right” and genuine peace at the supranational level.<sup>240</sup> Under this international rightful condition, violations of right—which Kant considers to be the main cause of conflict—would no longer be condoned. Only then would states be able to enjoy conclusive public right under a sovereign super-state.

In each of these cases, public right provides the necessary legal framework to limit each agent’s external freedom so that all may enjoy their respective rights. Kant also makes the conceptual claim that “if the principle of outer freedom limited by law is lacking in any one of these three possible forms of rightful condition, the framework of all the others is unavoidably undermined and must finally collapse.”<sup>241</sup> In other words, these different possible configurations of public right do not operate independently of one another.<sup>242</sup> Public right can be truly conclusive only when it is instituted on a universal scale. Even though I am secure in my property under domestic public law, foreign parties may nevertheless destroy and deprive me of my property. This is why Kant argues that a universal state of states, each with its own domestic

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<sup>239</sup> Kant, “The Metaphysics of Morals,” 455 (6:311).

<sup>240</sup> *Ibid.*, 487 (6:351).

<sup>241</sup> *Ibid.*, 455 (6:311).

<sup>242</sup> Anderson-Gold (see 111) suggests instead that “the integrity of the civil condition depends upon the subordination of its system of law to principles of international law,” but unless there is compelling evidence for such unidirectional ‘subordination’, this seems to be an overly narrow reading of Kant’s statement.

rightful condition and all maintaining rightful relations with one another, is not merely prudent but exemplifies justice.<sup>243</sup> Global justice is not simply an extension of domestic justice, since the latter is not complete without the former. The ultimate scope of public right is universal, therefore rightful interaction between persons requires both domestic and global public authorities.<sup>244</sup>

Even with this observation, it seems odd for Kant to make a distinction between the second and third types (the right of states and the right for a state of nations or formal cosmopolitan right, respectively) of possible rightful condition. Both involve states, and it is not clear how the second type even qualifies as a rightful condition, since the right of states is at best provisional in the absence of an overarching authority. Kant says that a right of states is possible only where “a *rightful condition* already exists,” without which “there is no public right” and “any right that one may think of outside it (in a state of nature) is instead merely private right.”<sup>245</sup> This means that for relations between states to be governed by the right of states, there must first be conclusive public right between them. Yet, the existence of a supranational authority would generate right for a state of nations or cosmopolitan right, which is simply the third kind of public right. It is puzzling how the right of states could exist in the absence of a supranational sovereign authority, and how an authority that preserves the right of states would be conceptually distinct from the sovereign authority of an international super-state that preserves right for a state of nations or cosmopolitan right.

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<sup>243</sup> Guyer, *Kant's System of Nature and Freedom*, 265.

<sup>244</sup> See Flikschuh, 115; and Varden, “A Kantian Conception of Global Justice,” 2045.

<sup>245</sup> Kant, “Toward Perpetual Peace,” 350 (8:385).

However, this distinction may be understood in light of the limitations in the analogy between individuals and states in a condition of nature. Like individuals, states in a condition of nature enjoy provisional rights, although states face a more complex situation. The “only difference between the state of nature of individual human beings and of families (in relation to one another) and that of [states] is that in the right of [states] we have to take into consideration not only the relation of one state toward another as a whole, but also the relation of individual persons of one state toward the individuals of another, as well as toward another state as a whole.”<sup>246</sup> The solution to a state of nature between individuals—the institution of a sovereign state authority—is relatively straightforward, since only individual-to-individual relations need to be taken into account. Conversely, seeking a solution to a condition of nature between states is more complicated, since it must account for three different kinds of relations: state-to-state, individual-to-state, and individual-to-individual.

This complexity poses an additional challenge to the institution of a supranational rightful condition because of the tension it generates between right within and right beyond the civil condition. Kant explains that states “already have a rightful constitution internally and hence have outgrown the constraint of others to bring them under a more extended law-governed constitution in accordance with their concepts of right.”<sup>247</sup> Assuming that states effectively preserve a public rightful condition for their citizens, a state’s actions at the international level are legitimate expressions of its people’s united will. For instance, a declaration of war by a state is consistent

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<sup>246</sup> Kant, “The Metaphysics of Morals,” 482 (6:343-44).

<sup>247</sup> Kant, “Toward Perpetual Peace,” 327 (8:355-56).

with the sovereign's duty to the citizens when the citizens are "regarded as co[-]legislating members of a state (not merely as means, but also as ends in themselves), [who] must therefore give their free assent, through their representatives, not only to waging war in general but also to each particular declaration of war."<sup>248</sup> The state's representation of its citizens' united will makes declarations of war legitimate, and more broadly illustrates how foundational consent is to legitimate coercion. In general—and this is especially apparent in declarations of war, which costs are borne by the citizens—the right of a state can be understood in terms of the sovereign's duty to represent its people's united will. When all citizens share in the united will that is expressed through the state's actions, individual-to-individual and individual-to-state relations are rightful. The right of a state is therefore defined in terms of rightful relations between individuals and the state to which authority they consent and submit.

However, the same actions that exemplify the right of a state are merely unilateral in the context of state-to-state relations, where public right is absent at the international level. Stating that "this difference [in the rights of states] from the rights of individuals in a state of nature makes it necessary to consider only such features as can be readily inferred from the concept of a state of nature,"<sup>249</sup> Kant suggests that right between states will inevitably be more limited. Leaving a state of nature between individuals requires the institution of laws to govern individual-to-individual relations, which also generates and is compatible with rightful individual-to-state relations under a legitimate state authority. However, states face an insurmountable tension

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<sup>248</sup> Kant, "The Metaphysics of Morals," 484 (6:345-46).

<sup>249</sup> Ibid., 482 (6:343-44).

between individual-to-state and state-to-state relations in attempting to leave an international state of nature. At the international level, public right between states can be conclusive only when there is a supranational sovereign to enforce it, and this generates rightful state-to-state relations. Because states can reasonably disagree, securing a rightful peace requires an international authority to specify and apply the laws governing interactions between them.<sup>250</sup> Conversely, choosing to remain in the state of nature is equivalent to abrogating all right. In this case, nothing could be considered unjust, even the act of compelling other states to enter civil society under a state of nations.<sup>251</sup> Yet, a supranational sovereign authority entails that each state is bound to act on the united will of its citizens (for individual-to-individual and individual-to-state relations to be rightful), as well as the orders of the supranational sovereign (for state-to-state relations to be rightful). This presents a potential conflict of duties that the state—whose fundamental duty is to secure public right for its own people—must avoid at all costs.

#### 4.2 The Conceptual Impossibility of a Supranational Sovereign

Kant's objections to pursuing universal peace via a universal state or multiple super-states are, respectively, empirical and conceptual in nature. However, I argue that these objections are most compelling when interpreted in terms of a common conceptual basis: national states would face a potential conflict between duties to their peoples and to a supranational sovereign. Two ways in which this conflict of duties could manifest are the emergence of a tyrannical

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<sup>250</sup> Varden, "A Kantian Conception of Global Justice," 2051.

<sup>251</sup> Rosen, 120-123.

universal state or war between multiple super-states. Kant claims that if “a state made up of nations were to extend too far over vast regions, governing it and so too protecting each of its members would finally have to become impossible, while several such corporations would again bring on a state of war.”<sup>252</sup> Kant’s empirical claim that a universal super-state would not be able to secure the rights of the multitude of its members is arguably outdated.<sup>253</sup> He makes a separate conceptual claim that multiple international super-states would also be unable to secure their members from the threat of conflict, thereby also failing to protect their members’ rights. Yet, both claims can be understood in terms of a single theoretical argument. The conflict of duties faced by states to their citizens and to any kind of supranational sovereign authority is a valid conceptual objection to the institution of a super-state, regardless of its scale (international union of some or all states) or type (universal or international super-state).

Kant dismisses the option of a universal state in pursuing universal peace on the claim that it would threaten rather than protect its members’ rights. He states that

The idea of the right of nations presupposes the *separation* of many neighboring states independent of one another; and although such a condition is of itself a condition of war (unless a federative union of them prevents the outbreak of hostilities), this is nevertheless better, in accordance with the idea of reason, than the fusion of them by one power overgrowing the rest and passing into a universal monarchy,

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<sup>252</sup> Kant, “The Metaphysics of Morals,” 487 (6:351).

<sup>253</sup> See Sidney Axinn, “World Community and its Government,” in *Autonomy and Community: Readings in Contemporary Kantian Social Philosophy*, edited by Jane Kneller and Sidney Axinn (Albany: State University of New York Press, 1998), 124-25.



since as the range of government expands laws progressively lose their vigor, and a soulless despotism, after it has destroyed the seed of good, finally deteriorates into anarchy.<sup>254</sup>

For instance, a tyrannical universal state could violate the rights of its citizens<sup>255</sup> by enslaving some of them for manpower required in developing rural territories. More generally, there is the danger that the rights of all would be further compromised if the conflicts that were previously matters of foreign policy became the domestic conflicts of a world state and were decided by a majority on the basis of their self-interest.<sup>256</sup> However, there are stronger theoretical grounds for rejecting a universal state apart from the possibility of tyranny. Each national state is responsible for protecting the specific rights and interests of its own people, and cannot justifiably confer this responsibility on a universal sovereign. A universal state's prime responsibility is to the universal community, so it could not prioritize the rights of a specific group of citizens in the same way that a national state prioritizes its own people's rights. Therefore, by allowing its citizens to become subjects of a universal state instead, the national state would be contravening its fundamental duty to represent its people's united will and to secure their collective rights.

Even the contention that world citizenship complements rather than dissolves national citizenship—where, for instance, an individual could have national, regional and global citizenship under a federal world republic—does not resolve this tension.<sup>257</sup> Sovereignty can indeed be conceptualized on a spectrum, and a federal world state does provide an intermediate stage

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<sup>254</sup> Kant, "Toward Perpetual Peace," 336 (8:367).

<sup>255</sup> Kant, "On the Common Saying," 307-8 (8:310-11).

<sup>256</sup> Höffe, *Kant's Cosmopolitan Theory of Law and Peace*, 199.

<sup>257</sup> *Ibid.*, 201-3.

between a voluntary congress and a universal state,<sup>258</sup> but a sovereign national state still cannot subject itself to a supranational authority. Kant's rejection of a supranational sovereign is not based on a merely empirical argument.<sup>259</sup> I argue that his system of right supports a conceptual argument against any sovereign super-state: the internal sovereignty *and* external subordination of states subjects the concept of sovereignty to tension in the domestic and international contexts. Kant explains that a federal republic of states

Would be a contradiction, inasmuch as every state involves the relation of a *superior* (legislating) to an *inferior* (obeying, namely the people); but a number of nations within one state would constitute only one nation, and this contradicts the presupposition (since here we have to consider the right of *nations* in relation to one another insofar as they comprise different states and are not to be fused into a single state).<sup>260</sup>

This reveals the logical incompatibility between internal sovereignty and external subordination. The latter is necessary for states' rights to be conclusive under right for a state of nations, but this would necessarily be at the expense of the former. The state is bound to act in accordance with the united will of its people,<sup>261</sup> and if the state is subject to an overarching sovereign authority, then it is also bound to act in accordance with the demands of this overarching sovereign, which could potentially contradict the sovereign will of its people.

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<sup>258</sup> Ibid., 197.

<sup>259</sup> For a discussion of this position see Kleingeld, 43.

<sup>260</sup> Kant, "Toward Perpetual Peace," 326 (8:354).

<sup>261</sup> This is why Kant emphasizes the importance of a republican constitution, which provides the political infrastructure necessary for ensuring that the sovereign acts to represent the united will of the citizens.

The right of a state to represent the united will of its citizens is essentially a double-edged sword. It protects public right in the domestic context of individual-to-individual and individual-to-state relations, but is also an obstacle to instituting a supranational sovereign authority under which international (state-to-state) rightful relations can finally be conclusive.<sup>262</sup> Therefore, the “Kantian paradox is that it is wrong for states to remain in the state of nature but at the same time impossible for them to escape it so long as they remain independent states.”<sup>263</sup> Since the state’s primary duty is to secure the rights of its citizens, its moral personality is dependent on *their* moral personality and autonomy. The state could not justifiably choose to limit its people’s sovereignty by subjecting itself to an overarching authority, especially since such an authority could potentially contravene its people’s rights. Failure to protect its citizens’ rights would destroy the state’s own moral personality and its right to equality and freedom under principles of international law.<sup>264</sup> States cannot subject themselves to a supranational sovereign, thus “rejecting *in hypothesi* what is correct *in thesi*”<sup>265</sup> the only means of securing universal public right, because this jeopardizes their peoples’ rights and consequently also their own moral personalities.

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<sup>262</sup> It is conceivable that the inability to secure international right for states in relation to one another may also threaten the rights of individuals within a civil condition. For instance, if a state were embroiled in war, its citizens would have to suffer the effects. I will not dwell here on this issue but, suffice to say, even if a state was in the midst of international conflict, its citizens may be harmed but it would not necessarily be deprived of the right of a state, insofar as the sovereign power is consistent in representing the united will of its people through its actions.

<sup>263</sup> Terry Nardin, “Kantian Republicanism and International Relations Theory,” Address at the *Symposium on International Relations Theory and Intellectual History: Partners, Strangers, Antagonists?* The National University of Singapore Department of Political Science (March 20, 2015), 13.

<sup>264</sup> B. Sharon Byrd, “The State as a ‘Moral Person’,” in *Kant and Law*, edited by B. Sharon Byrd and Joachim Hruschka (Aldershot, UK: Ashgate, 2006), 384.

<sup>265</sup> Kant, “Toward Perpetual Peace,” 328 (8:357).

Ironically, Kant's republicanism rules out the establishment of a coercive world state while supporting the feasibility of a strong international federation.<sup>266</sup> The conditions of the international state of nature are so deplorable that states are faced with the need to seek alternative ways of leaving it, short of instituting conclusive international public right under an overarching sovereign authority. Although the preliminary articles of *Perpetual Peace* do not prohibit war, Kant states that "Reason, from the throne of the highest morally legislative power, delivers an absolute condemnation of war as a procedure for determining rights and, on the contrary, makes a condition of peace, which cannot be instituted or assured without a pact of nations among themselves, a direct duty; so there must be a league of a special kind, which can be called a *pacific league (foedus pacificum)*... [that] seeks to end *all war* forever."<sup>267</sup> A public rightful condition under a universal state or international super-state may then be considered an impractical ideal, which Kant suggests approximating via a limited rightful condition under a voluntary federation and a right of states based on common agreement.

A league of nations in accordance with the idea of an original social contract is necessary, not in order to meddle in one another's internal dissensions but to protect against attacks from without... This alliance must, however, involve no sovereign authority (as in a civil constitution), but only an *association* (federation); it must be an alliance that can be renounced at any time and so must be renewed from time to time. This is a right *in subsidium* of another and original

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<sup>266</sup> Kleingeld, 49.

<sup>267</sup> See Kant, "Toward Perpetual Peace," 327 (8:355-56). The right to wage war is part of the right of states because although war cannot determine moral rights, it can settle other matters.

right, to avoid getting involved in a state of actual war among the other members (*foedus Amphictyonum*).<sup>268</sup>

The significance of Kant's emphasis on the necessity of a federation of nations is apparent in the tension between conclusive right under a civil condition and provisional right in the interstate condition of nature. States' obligations to protect the interests of their citizens present an obstacle to instituting an international super-state for conclusive universal peace. As a compromise, states can retain complete sovereignty<sup>269</sup> as partners in a pacific federation in the form of "a voluntary coalition of different states which can be *dissolved* at any time, not a federation (like that of the American states) which is based on a constitution and can therefore not be dissolved."<sup>270</sup> This compromise reflects the imperfect analogy between individuals and states: the latter cannot, like the former, leave the state of nature by submitting to a sovereign authority.

The right of a state can receive limited (i.e. not guaranteed) protection even in the absence of right for a state of nations or cosmopolitan right.<sup>271</sup> States may exit the state of nature without compromising on their duties to their citizens by entering "a condition that is not a cosmopolitan commonwealth under a single head but is still a rightful condition of *federation* in accordance with a commonly agreed upon *right of nations*."<sup>272</sup> This voluntary federation or congress of nations is a cooperative mechanism that allows states to avoid a

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<sup>268</sup> Kant, "The Metaphysics of Morals," 482-83 (6:344).

<sup>269</sup> Höffe, *Kant's Cosmopolitan Theory of Law and Peace*, 195.

<sup>270</sup> Kant, "The Metaphysics of Morals," 488 (6:351).

<sup>271</sup> Kant's discussion of international justice suggests that he conceives of degrees of integration. Kleingeld (47-48) suggests that Kant's use of the German term "Bund" to denote a supranational institution is neutral as to whether or not the institution has the power to enforce its laws. Kant envisions a strong federal authority in the *Idea for a Universal History*, but "Bund" appears to denote "a much weaker kind of entity" in later texts including the *Metaphysics of Morals* and *Perpetual Peace*, where Kant first introduces the idea of "a loose league of peoples, as a first step."

<sup>272</sup> Kant, "On the Common Saying," 307-8 (8:311).

conflict of duties while providing a limited (provisional) solution to the problems that characterize the state of nature.<sup>273</sup> Kant describes this approximation of a rightful condition by a congress of states bound to act according to commonly agreed laws as “the surrogate of the civil social union... that reason must connect necessarily with the concept of the right of [states].”<sup>274</sup> The provisional right of states grounded in common consent imperfectly approximates conclusive right under a sovereign state of nations, and is based on the sovereign state as the prototypical international actor, as well as concepts such as territorial integrity, non-intervention, and the right to go to war.<sup>275</sup>

Kant’s arguments for a voluntary congress rather than an international super-state are compatible with his defense of an international state as a normative ideal,<sup>276</sup> because they are not merely prudential or contingent on the nature of current political reality. Instead, they reflect an acknowledgment of two important conceptual distinctions. First, reason informs us about the nature of ideals in theory. However, when employed for practical ends, the exercise of reason must account for the imperfect and non-ideal nature of reality. This is why Kant emphasizes that acknowledging the imperfect nature of empirical reality does not require a complete rejection of ideals; the mere possibility of achieving these ideals suggests that we should at least attempt to do so.<sup>277</sup> In the context of supranational right, universal peace may ultimately be

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<sup>273</sup> See Kleingeld (125) for a discussion of the role of free trade, which “brings about the functional equivalent of a league of states and promotes the realization of cosmopolitan right, overcoming the injustice of colonialism and slavery.”

<sup>274</sup> Kant, “Toward Perpetual Peace,” 327-28 (8:356).

<sup>275</sup> Georg Cavallar, *Kant and the Theory and Practice of International Right* (Cardiff: University of Wales Press, 1999), 44.

<sup>276</sup> Kleingeld, 52.

<sup>277</sup> See Kant, “On the Common Saying,” 309 (8:307-13).

unachievable but this goal cannot simply be disregarded. The duty to work toward universal peace remains despite the impracticality of a sovereign super-state—the ideal means for this purpose.

Second, Kant distinguishes between the means and end of international right. The ultimate goal is universal peace, whereas the only means of guaranteeing universal peace is the institution of a supranational sovereign to enforce international public right. The conflict faced by states between duties to their own citizens and to an overarching sovereign is a feature of imperfect reality, which rules out the only means of guaranteeing universal peace. Since the goal is more important than the means of achieving it, universal peace must be approximated to the greatest extent possible through means that are conducive to it (namely a congress of states).<sup>278</sup>

The importance of a voluntary congress of states may therefore be understood in light of its capacity to promote universal peace without threatening it in the shorter term.<sup>279</sup> Because “the severing of a bond of civil or cosmopolitan union even before a better constitution is ready to take its place is contrary to all political prudence, which agrees with morals in this, it would indeed be absurd to require that those defects be altered at once and violently.”<sup>280</sup> Therefore, the “harmony of politics with morals is possible only within a federative union,” and “all political prudence has for its rightful basis the establishment of such a union in its greatest possible extent.”<sup>281</sup> Kant even claims that “[s]omething of

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<sup>278</sup> Kaufman, for instance, (see 22-23) claims that in “arguing that the requirements of morally practical reason, in particular the goal of perpetual peace, can be realized in the external world (through mechanism or coordination), Kant is attempting to preserve the moral obligation to realize perpetual peace.”

<sup>279</sup> Kant, “The Metaphysics of Morals,” 487 (6:351).

<sup>280</sup> Kant, “Toward Perpetual Peace,” 340 (8:372).

<sup>281</sup> Ibid., 350 (8:385).

this kind took place (at least as regards the formalities of the right of nations for the sake of keeping the peace) in the first half of the present century, in the assembly of the States General at the Hague.”<sup>282</sup> More contemporary instances of a voluntary congress of states would include the United Nations and regional associations such as the European Union, and the Association of South East Asian Nations.

One puzzle is how a pacific confederation could be viable if it allowed for secession and lacked coercive law.<sup>283</sup> Although a voluntary congress of states cannot secure conclusive rights for its members, it provides a framework under which peaceful relations are possible with a diminished need to resort to hostilities and violence. Kant maintains that “only by such a congress can the idea of a public right of nations be realized, one to be established for deciding their disputes in a civil way, as if by a lawsuit, rather than in a barbaric way (the way of savages), namely by war.”<sup>284</sup> In a voluntary congress, states submit to an analog of a court, which simulates the judicial element of the state apparatus. Fulfilling one primary function of public law, this judicial authority can impartially and disinterestedly interpret the dealings and relations between state parties.<sup>285</sup> Although the legislative and executive elements are absent because states do not submit to enforceable public laws under a sovereign authority, an international court helps to mitigate conflict by performing the judicial role of such an authority. Ultimately, the lack of coercive international law means that sovereign states are entitled to freely

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<sup>282</sup> Kant, “The Metaphysics of Morals,” 487-88 (6:350).

<sup>283</sup> Nardin, 13.

<sup>284</sup> Kant, “The Metaphysics of Morals,” 488 (6:351).

<sup>285</sup> Weinrib, “Law as Idea of Reason,” 34.



determine their own affairs.<sup>286</sup> States cannot be forced to comply with the international court's rulings since this would contradict the basic idea of a people as a single self-determining and self-legislating political entity.<sup>287</sup> However, states can resolve disagreements peacefully by accepting decisions of the international court as binding. They are to "act *as if* there were a real, effective federal system operative at the global level," and this would produce a stable and secure condition of rightful peace—the goal of international justice.<sup>288</sup>

An international court makes a practical difference to interstate relations by providing an alternative to war;<sup>289</sup> this constitutes a step toward universal peace even as states retain their individual rights. The international court's authority is limited to pronouncing on cases of disagreement between states, and its decisions cannot be enforced given the absence of a supranational executive. This highly restricted role reflects a compromise between the right of states to avoid war with one another and the right of each state to protect its people's sovereign will. States cannot—in view of the conflict with the duty to their citizens—simply submit to a supranational authority to secure conclusive public right between themselves. However, they can consent to the adjudication of conflicts by an international judicial authority (but not the enforcement of its judgments), thereby making possible the judicial element of state authority even if the legislative and executive elements are (at least presently) unattainable. The International Court of Justice is evidence of such an attempt to institute some degree of public right at the international level and

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<sup>286</sup> Nardin, 13.

<sup>287</sup> Kleingeld, 54-56.

<sup>288</sup> Orend, 411.

<sup>289</sup> Kleingeld, 68.

to get marginally closer to universal peace.<sup>290</sup> Although an international court can adjudicate conflicts between states to mitigate indeterminacy in the exercise of states' rights to self-defense, there is still the question of which laws are to be used in adjudicating conflicting claims. Without the legislative element of international public right, it is unclear which substantive standards the international court can or should appeal to in adjudicating conflicts. It therefore seems that even though an international court is a conceptually viable means of promoting universal peace, "the inherent tension between sovereignty and right cannot be [fully] resolved so long as these concepts are defined as they are in discussing right within the state."<sup>291</sup> Consequently, a comprehensive and coercive system of justice that nevertheless preserves state sovereignty is not only unlikely but conceptually impossible.<sup>292</sup>

Although Kant has claimed that perpetual peace is impossible,<sup>293</sup> cosmopolitan right is nevertheless the "next step in the evolution of right" following the establishment of the sovereign state and its domestic rightful condition.<sup>294</sup> He acknowledges that various empirical conditions frustrate efforts to achieve universal peace and rule out a universal state modeled on a republic—the most

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<sup>290</sup> The International Criminal Court (ICC) (see <http://www.icc-cpi.int/>) is arguably a limited instrument of international right (between states and private individuals or organizations, or among the latter), acting as "a means of securing just punishment on behalf of defenceless persons and peoples – or persons and peoples who, in effect, are stateless and hence deprived of protection by a just state." See Varden, "A Kantian Conception of Global Justice," 2052 (footnote).

<sup>291</sup> Nardin, 13.

<sup>292</sup> Ibid., 13.

<sup>293</sup> Kleingeld (see 62) argues that gradually developing "a better understanding of the principles of international right and a greater agreement on its proper conception... will eventually lead to mutual understanding and peace," and finally make possible the transition to a global juridical condition.

<sup>294</sup> Cavallar, 60. See also Williams's discussion on the idea of progress in Kant's political theory (*Essays on Kant's Political Philosophy*, 1-14).

obvious possibility for achieving such peace.<sup>295</sup> Yet, Kant demands that political actors create more favorable institutional conditions for peace, namely by promoting a pacific federation whose establishment would meet with less resistance but would nevertheless help to foster conditions amenable to an eventual transition to a universal state.<sup>296</sup>

Kant's arguments for universal peace are far from contradictory. Despite being fully cognizant of the gap between ideals and practical reality, he maintains that it is important to respect the duty to promote universal peace given its theoretical possibility and the normative authority of reason.<sup>297</sup> Perhaps the most striking feature of Kant's conceptions of cosmopolitan right in both formal and substantive senses is his account of empirical limitations on achieving ideal conditions of right. This is analogous to how Kant's system of right simultaneously supports the idea that poverty relief is necessary for a public rightful condition that guarantees external freedom, and places heavy restrictions on the means by which relief efforts can be executed. The next chapter will elaborate on the implications of limited international public right on the prospects for cross-border poverty relief.

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<sup>295</sup> James Bohman, "The Public Spheres of the World Citizen," in *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, edited by James Bohman and Matthias Lutz-Bachmann (Cambridge, MA: MIT Press, 1997), 179.

<sup>296</sup> See Pogge, "Kant's Theory of Justice," 424.

<sup>297</sup> Kant invokes an 'ought implies can' argument for the duty to promote universal peace, which is based on the reasoning that this duty remains valid considering the possibility of moral goodness in human beings. (See Kant, "On the Common Saying," 309 (8:307-13).) However, Kant also provides a teleological argument (See Kant, "Toward Perpetual Peace," 336 (8:361-68) that has been the subject of some criticism. Ellis, for instance, (see 123) considers the latter incompatible with and unnecessary in view of the former.

## 5. Hospitality and Economic Refuge

Redistribution to relieve poverty across borders is indefensible as a matter of justice, although it may be justified as an unenforceable ethical duty of beneficence. The duty to approximate universal peace does not entail any duty of justice to foster public right or mutual obligations between the wealthy and poor across the world as in a single state.<sup>298</sup> Ultimately, as the third chapter concludes, poverty relief for Kant is obligatory only within a civil condition, where state authorities are bound to protect their citizens' rights to independence. This chapter defends a conceptual argument for cross-border poverty relief based on Kant's cosmopolitan right to hospitality, which suggests that the poor have a right to economic migration and may exercise this right to seek protection from the state of nature.<sup>299</sup> All human beings have a cosmopolitan right to hospitality in foreign countries based on their original right to collective ownership of the earth.<sup>300</sup> Although cosmopolitan right in its substantive sense is limited to hospitality, Kant specifies that states may turn foreigners away only if this can be done without destroying them.<sup>301</sup> Since the state of nature is marked by a constant threat of war and conflict, people remain susceptible to destruction until they enter a civil rightful condition. Having been excluded from a rightful condition, the poor are in constant danger of destruction.<sup>302</sup> I argue that the poor have a right to refuge in foreign

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<sup>298</sup> See Williams, "Towards a Kantian Theory of International Distributive Justice," for such an argument.

<sup>299</sup> Kant, "The Metaphysics of Morals," 456 (6:312).

<sup>300</sup> Kant, "Toward Perpetual Peace," 328-29 (8:357-58).

<sup>301</sup> *Ibid.*, 328-29 (8:357-58).

<sup>302</sup> For instance, the boat people (mostly Rohingya Muslims from Myanmar and Bangladeshis) "fled persecution and poverty at home or were abducted by traffickers, and now face sickness and starvation at sea." See Praveen Menon, "Malaysia, Indonesia to Let 'Boat People' Come Ashore Temporarily." *Reuters*. May 20, 2015. Accessed August 11, 2015. <http://www.reuters.com/article/2015/05/21/us-asia-migrants-idUSKBN0O50MV20150521>;

states—which are obliged to accommodate them as long as they respect local laws—given that they have no civil rightful condition to return to and could otherwise perish in the state of nature.<sup>303</sup>

This Kantian approach to the problem of poverty generates an interesting and counterintuitive observation: cross-border poverty relief is not necessarily a matter of *resource* redistribution between states. Poverty relief may instead be a matter of ‘redistributing’ *individuals* across state boundaries. Where a person’s basic needs are unmet, his or her economic need amounts to a denial of his or her human rights,<sup>304</sup> despite the distinction between seeking refuge and economic migration that is often made in international law. Although this argument for relief is theoretically defensible, the provisional nature of international public right implies that states may not intervene in one another’s affairs to enforce the poor’s right to relief. As discussed in the previous chapter, an international super-state (that secures public right through universal reciprocal coercion to which all states could consent) is conceptually impossible. Consequently, the right to relief cannot be enforced because there are no legitimate means for doing so. Where states are the primary agents of relief, this right remains unenforceable and merely provisional in the absence of an international super-state that could publicly coerce a state into providing relief to its own citizens or granting refuge to impoverished foreigners. I aim to demonstrate that intervention on the pretext of remedying the target state’s

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and “Malaysia and Thailand Turn Away Hundreds on Migrant Boats.” *The Guardian*. May 14, 2015. Accessed August 11, 2015.  
<http://www.theguardian.com/world/2015/may/14/malaysia-turns-back-migrant-boat-with-more-than-500-aboard>.

<sup>303</sup> One interesting question this conclusion raises is whether there are or could be other grounds for a right to migrate, but for the purposes of this thesis I will leave this issue aside for future discussion.

<sup>304</sup> By ‘human rights’ I mean the rights a person possesses as a human being, understood in light of the discussion on right in the second chapter.

failure to fulfill the duty of relief (i.e. intervention that instigates a hindrance to a hindrance to the poor's rights) is essentially unilateral and inconsistent with Kant's demand for universal reciprocal coercion, no matter how well-intentioned or effective it may be.

### 5.1 The Cosmopolitan Right to Hospitality

The general *attempt* to achieve universal peace cannot be abandoned simply because the final goal is unattainable.<sup>305</sup> Short of achieving a secure and enduring, as well as rightful peace, cosmopolitan right nevertheless supports the institution of public right at the supranational level by opening up possibilities for public law and a universal commonwealth. Acknowledging the existence of global concerns, Kant emphasizes that because

the (narrower or wider) community of the nations of the earth has now gone so far that a violation of right on *one* place of the earth is felt in *all*, the idea of a cosmopolitan right is no fantastic and exaggerated way of representing right; it is, instead, a supplement to the unwritten code of the right of a state and the right of nations necessary for the sake of any public rights of human beings and so for perpetual peace; only under this condition can we flatter ourselves that we are constantly approaching perpetual peace.<sup>306</sup>

Cosmopolitan right does not contradict the right of a state<sup>307</sup> because the state's duties to foreign persons are fundamentally different from those to its

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<sup>305</sup> Kant, "The Metaphysics of Morals," 487 (6:350-51).

<sup>306</sup> Kant, "Toward Perpetual Peace," 330-31 (8:360).

<sup>307</sup> See Varden, "Patriotism, Poverty and Global Justice," 254; for her discussion of the debate between "universalist" and state-centric theories.

own citizens (i.e. the former are entitled to hospitality, which is irrelevant to the latter). In fact, it supplements the state-centric right of a state and right of states with a universal regard for human beings as joint owners of the earth's physical space.

The cosmopolitan right to hospitality is based on the following line of reasoning:

- A) All human beings have an original right to occupy space.
- B) The earth's physical space is finite and its occupancy is exclusive.
- C) Therefore, this original right translates into an original right to common possession of the earth.
- D) This entails a right to visit and enjoy hospitality in foreign lands.

The “*right to visit* [and] to present oneself for society” is based on the need for human beings to share the earth's physical space, which suggests that originally no one was more entitled than anyone else to be in a particular location.<sup>308</sup> Kant states that prior to any act of acquisition, all persons originally possess land in conformity with right, having been born as an occupant of space and having a right to “be wherever nature or chance (apart from their will) has placed them.”<sup>309</sup> Original possession in common, says Kant, is “a practical rational concept which contains *a priori* the principle in accordance with which alone men can use a place on the earth in accordance with the principles of Right.”<sup>310</sup> This practical rational concept also expresses

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<sup>308</sup> Kant, “Toward Perpetual Peace,” 328-329 (8:357-58).

<sup>309</sup> Kant, “The Metaphysics of Morals,” 414-15 (6:262).

<sup>310</sup> Ibid., 414-15 (6:262).

the “relations of systematic interdependence that obtain between individuals in virtue of the unavoidable unity of places on the earth.”<sup>311</sup>

In contrast, states are generally founded on specific geographical territories, yet their rights to these territories are not original but acquired, and merely provisional in the absence of a supranational authority to enforce them.<sup>312</sup>

National boundaries are both artificial and provisional, while the contiguity of the earth’s surface ensures material interdependence and makes possible universal and potentially unlimited interaction.<sup>313</sup> Therefore, Kant states in *Perpetual Peace* that cosmopolitan right “shall be limited to conditions of universal *hospitality*,” explaining that “it is not a question of philanthropy but of *right*, so that *hospitality* (hospitableness) means the right of a foreigner not to be treated with hostility because he has arrived on the land of another.”<sup>314</sup>

The cosmopolitan right to hospitality is, in Kant’s view, the minimally necessary condition for establishing peaceful relations between states, especially through commercial means.<sup>315</sup> Kant explains that “this right to hospitality—that is, the authorization of a foreign newcomer—does not extend beyond the conditions which make it possible to *seek* commerce with the old inhabitants,” although it does allow “distant parts of the world [to] enter peaceably into relations with one another, which can eventually become publicly lawful and so finally bring the human race ever closer to a cosmopolitan constitution.”<sup>316</sup> Insofar as these relations are peaceful and

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<sup>311</sup> Flikschuh, 167.

<sup>312</sup> I disagree with Ripstein, (see 228) who argues that states do not ‘acquire’ property and do not need a common executive among them to omnilaterally authorize any unilateral acquisition.

<sup>313</sup> Shell, 140.

<sup>314</sup> Kant, “Toward Perpetual Peace,” 328-329 (8:357-58).

<sup>315</sup> Shell, 175.

<sup>316</sup> Kant, “Toward Perpetual Peace,” 329 (8:358).



characterized by respect for right,<sup>317</sup> they eventually pave the way for international public law, which is one central element of a cosmopolitan commonwealth. The cosmopolitan right to hospitality thus helps to bridge the conceptual gap between the existing international system, which is grounded in the provisional right of states, and the unachievable ideal of a publicly rightful international super-state.

## 5.2 The Right to Economic Refuge

In the first place, wealthier states and persons are not obliged to contribute resources to impoverished foreigners, because they have no enforceable duties to those with whom they do not share in a civil rightful condition. As mentioned in the third chapter, it is only within a civil rightful condition that the state can legitimately tax the wealthy to redistribute resources to the poor. However, in the absence of a universal state or cosmopolitan commonwealth, there is no rightful condition that could constitute sufficient grounds for an enforceable duty of relief to impoverished foreigners.<sup>318</sup> This is because the problem lies not in the existence of national boundaries, but in the failure of states to provide for their own citizens. National boundaries may perpetuate global problems such as inequality of opportunity and poverty,<sup>319</sup> but each state has a duty to resolve these problems—which threaten the capacity of its

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<sup>317</sup> For instance, Kant (see “Toward Perpetual Peace,” 329-30 (8:358-59)) vehemently objects to the violent treatment of indigenous peoples by foreign settlers.

<sup>318</sup> This does not preclude the existence of a moral obligation to relieve poverty across borders, although I will not address the prospects for such a moral duty in this thesis, which focuses on duties of justice.

<sup>319</sup> See Ripstein, 297. Ripstein explains how this compatibility can be attributed to Kant’s equation of mere wish and need.

citizens to share in a united will—within its own borders.<sup>320</sup> Rightful international and cosmopolitan relations ideally presuppose internally just states, where the “cosmopolitan analogue of the duty to support the poor is not world citizenship, but the division of the world into states in a way that guarantees that each person has a home state to return to.”<sup>321</sup> In other words, the problem of poverty can ultimately be attributed to the failure of states to provide for those living under their coercive authority.

Although approaches to poverty relief focusing on resource redistribution seem more intuitive and have received much attention,<sup>322</sup> I argue that cross-border poverty relief by means of redistribution is inconsistent with Kant’s system of right for two reasons. First, this approach requires a public rightful condition between states, which I have shown to be conceptually impossible. Second, it is not clear how a redistributive duty to foreigners can be derived from or made compatible with Kant’s argument (as I have interpreted it) that redistribution is justifiable only in the context of states’ responsibility for securing their citizens’ rights in a public setting.

In contrast, the cosmopolitan right to hospitality suggests a different approach to the problem of addressing poverty outside one’s national borders, in the

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<sup>320</sup> Ibid., 295-96.

<sup>321</sup> Ibid., 297.

<sup>322</sup> For some prominent examples see John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971); *Political Liberalism*, (New York: Columbia University Press, 1993); and *The Law of Peoples*, (Cambridge, MA: Harvard University Press, 1999); Peter Singer, “Famine, Affluence, and Morality,” *Philosophy and Public Affairs* 1, no. 3 (1972): 229–243; Thomas Pogge, “An Egalitarian Law of Peoples,” *Philosophy and Public Affairs* 23, no. 3 (1994): 195–224; and “Allowing the Poor to Share the Earth,” *Journal of Moral Philosophy* 8, no. 3 (2011): 335–352. For a discussion of the burgeoning international distributive justice literature see Michael Blake and Patrick Taylor Smith, “International Distributive Justice,” in *The Stanford Encyclopedia of Philosophy* (Spring 2015 Edition), edited by Edward N. Zalta (Accessed August 11, 2015) <http://plato.stanford.edu/archives/spr2015/entries/international-justice/>.

event that states fail to fulfill their duty of relief to their own citizens.<sup>323</sup> Kant's cosmopolitan right of universal hospitality posits that a state can turn a foreigner away only "if this can be done without destroying him, but as long as he behaves peaceably where he is, he cannot be treated with hostility."<sup>324</sup> On account of the original human right to joint ownership of the earth's surface, foreigners must be allowed to visit as long as they respect the local state's acquired territorial rights and domestic laws. The state's provisional territorial rights are threatened only when foreigners fail to respect local laws and upset domestic public right. In this case, the state is entitled to take unilateral action to protect itself by refusing entry to such foreigners, because each state is in a condition of nature in relation to foreign states and individuals. However, where there is no threat to domestic public right, one kind of violence that foreigners cannot rightly be subjected to is being compelled to die because they have been refused entry into state borders. Since the state of nature is characterized by the threat of warfare and destruction, and the poor are characterized by their exclusion from a rightful condition, states must grant entry to impoverished foreigners who have no rightful condition to return to.

One possible objection to my argument is that states do not subject the poor to the threat of destruction by refusing them entry, since the poor are *already* threatened with destruction in the state of nature and have merely been denied one option by which they can leave this lawless condition. However, this objection is inconsistent with Kant's framework of right. While the poor may not in fact be worse off (such as by being subjected to a new or additional

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<sup>323</sup> See Varden, "Patriotism, Poverty and Global Justice," 262.

<sup>324</sup> Kant, "Toward Perpetual Peace," 328-29 (8:357-58).

threat), being refused entry into a foreign state amounts to unjustifiable deprivation of their right to leave the state of nature. Short of actively harming the poor, failing to help them is also wrong because it ensures that they continue to be threatened with destruction.<sup>325</sup> Specifically, I argue that refusing entry to impoverished foreigners is wrong because states cannot do so without threat to their own moral personality. Refusing entry to economic refugees constitutes a unilateral enforcement of the state's acquired territorial rights, to the point of denying the original right of all human beings to joint possession of the earth and to hospitality. This undermines the state's moral personality that is, in the first place, premised on the original rights of human beings. The state's acquired right to its territory cannot be exercised at the expense of human beings' original right to hospitality for two reasons. First, except where the former is threatened, there is insufficient cause to deny the latter. Second, it is contradictory to do so because the right of a state presupposes and cannot therefore be exercised to violate original or innate human rights.

The innate right of human beings and the acquired right of states to their territories are both provisional, given the lack of an enforcement mechanism: the ideal but impractical cosmopolitan or universal commonwealth. States and foreign persons are in a condition of nature in relation to one another, since there is no supranational sovereign that secures universal public right. Both kinds of agents are entitled to exercise unilateral force in protecting their respective provisional rights from external threats, and so states may unilaterally enforce their acquired territorial rights by refusing entry to foreigners whose failure to respect local laws threatens the right of states to

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<sup>325</sup> Kant, "The Metaphysics of Morals," 456 (6:312).

preserve a civil rightful condition. In the absence of such a threat, both the acquired territorial rights of states and the cosmopolitan right of human beings to hospitality can coexist. In this case, there is no threat to the state and it has no reason to defend its territorial rights by denying hospitality to foreigners.

Apart from the lack of sufficient cause, states simply cannot without contradiction deny foreigners' rights to economic refuge unless its domestic rightful condition is threatened. As shown in the second chapter, the basis of the right of a state is the innate and private rights of its citizens, and these include the original right to possession in common of the earth and to hospitality in foreign states. The state's territorial right is essentially a united expression of its citizens' innate individual innate rights to jointly possess and occupy space on the earth. This means that the acquired right of a state to its territory presupposes the innate right of human beings to common possession of the earth and its corollary but equally innate (i.e. not requiring any act of acquisition) right to hospitality.<sup>326</sup> It would therefore be contradictory for the former to be exercised in a manner that violates the latter—as in the case where states refuse entry to economic refugees who have a right to exist somewhere. In general, human beings cannot justifiably be denied their original right to hospitality, especially where something as fundamental as self-preservation is at stake. The only exception is where foreigners violate local laws and thereby threaten the local state's moral personality, thus warranting the latter's defensive unilateral enforcement of its territorial rights. Otherwise, granting foreigners the right of entry (when they respect local laws) may arguably erode the integrity of a state's boundaries, but would not

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<sup>326</sup> See Varden, "A Kantian Conception of Global Justice," 2051-2052 (footnote).

constitute a threat to the state's self-preservation. Ultimately, states may defend their moral personality by denying entry to economic refugees who violate local laws, but in the absence of this threat, rejecting economic refugees would instead undermine their own moral personality.

### 5.3 Limitations on the Right to Cross-Border Poverty Relief

Although economic refugees have a right to hospitality in foreign countries, this does not guarantee them entry into a civil rightful condition and complete security from the state of nature. Until an economic refugee obtains legal status as a citizen, the foreign state in which she resides neither represents her will nor acts as her public authority to fully protect her rights.<sup>327</sup> In the first place, exercising the cosmopolitan right to enter and visit foreign countries does not preclude the possibility of acquiring citizenship there and entering a rightful condition under the authority of that state. Unless the poor have been denied the right to visit because of their failure to respect local laws, their obedience to local laws is essentially an expression of consent to be subject to the local sovereign. This expression of consent would provide the basis for the exercise not only of their right to visit, but also the right to enter a civil condition by becoming a protected citizen of the state. Acquiring citizenship in this manner is consistent with right, because it establishes a reciprocal relationship between the foreigner and the state. The former consents to abide by the latter's laws and be subjected to its coercive authority, and the latter in turn protects the former's rights. Impoverished persons could become citizens of a foreign state if they could share in the united will on which its civil

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<sup>327</sup> Ibid., 2051-2052 (footnote).

rightful condition is based. This manner of entering a rightful condition may be observed in practice with countries granting foreign nationals permanent residency or citizenship status after having fulfilled certain conditions such as having lived and worked locally for a certain number of years.

Nevertheless, states reserve the right to withhold citizenship from economic refugees. States may not refuse entry to and subject impoverished foreigners to the threat of destruction in the state of nature, although they may choose not to grant these foreigners citizenship rights. The poor's right to leave the state of nature by entering a foreign state is limited to the right to visit, and does not include the right to citizenship or even "*the right to be a guest* (for this a special beneficent pact would be required, making him a member of the household for a certain time)."<sup>328</sup> Kant emphasizes that "the right of citizens of the world *to try to* establish community with all and, to this end, to *visit* all regions of the earth... [it] is not, however, a right to *make a settlement* on the land of another nation (*ius incolatus*); for this, a specific contract is required."<sup>329</sup> Citizenship rights depend on the consent of both foreign individual and state to enter into a mutually binding compact, which is distinct from the cosmopolitan right to hospitality. This raises the question of whether cosmopolitan right could genuinely allow the poor to escape the state of nature and the threat of destruction that characterizes it. Even though it does not guarantee membership within a rightful condition, the cosmopolitan right to hospitality and economic refuge means that the poor nevertheless receive some degree of protection from the state of nature. Just as the imperfect rightful condition characterized by the provisional right of states approximates

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<sup>328</sup> Kant, "Toward Perpetual Peace," 328-29 (8:357-58).

<sup>329</sup> Kant, "The Metaphysics of Morals," 489.

conclusive right under a universal state of nations, the partial protection afforded to impoverished foreigners by the cosmopolitan right to hospitality approximates full protection enjoyed by citizens of a sovereign state.

The argument made in chapter 3 for unconditional poverty relief by the state suggests a possible problem. If public right and the state's legitimacy are collectively undermined by the existence of impoverished persons within state borders, it appears that providing refuge to impoverished foreigners would be extremely detrimental to the host state. Impoverished citizens and refugees are similarly deprived of their personal freedom and the capacity to share in the united will (without which the state's authority is illegitimate). However, the key difference between them is that states reserve the right to grant refugees the right to visit on the condition that the latter respects local laws. This means that for refugees, respect for public right in the host state is a prerequisite for the right to hospitality, failing which the host state has the right to reject them. Refugees do not therefore pose the same threat to public right that impoverished citizens do. The fact that refugees are deprived of their freedom remains a pressing problem in itself, but this neither constitutes a threat to the host state nor obliges it to rectify this problem on the same basis that applies to citizens.

A related question is whether states can fulfill their duty of hospitality to economic refugees by redistributing some resources to them instead of granting them refuge. As discussed in the third chapter, the state has a public right to fulfill its duty of relief to its citizens by redistributing resources among them from the wealthy to the poor. This suggests that states are under no obligation of justice to redistribute resources to impoverished foreigners who



are external to the civil rightful condition of the state, although they may do so out of beneficence (a moral obligation). It is wrong for a state to refuse entry to an impoverished foreigner who could subsequently die without protection (unless the latter has violated local laws), yet it is not clearly wrong to refuse him entry if the state provides him with the resources necessary to avoid destruction, such as sufficient food, water and safe passage to another state where refuge or citizenship may be sought. Providing economic refugees with material resources alone before sending them on their way would not suffice, since without some degree of protection they could still be destroyed in the state of nature before they arrive at their next destination. If safe passage were also guaranteed by the state, this could arguably count as temporary refuge from the condition of nature no worse than what economic refugees would enjoy as visitors. Leaving aside for now the practical question of what kinds and amounts of resources are necessary for safe passage to another state, and if a state could in reality supply these to impoverished foreigners, there is at least a theoretical possibility for states to respect the cosmopolitan rights of economic refugees without having to take them in.

Migration is a means for the poor, who are in a state of nature as a result of their exclusion from a rightful condition, to exercise their rights to freedom and self-preservation. Although international law tends to distinguish between refuge-seeking and economic migration, the poor are entitled to relief in the form of the right to seek economic refuge,<sup>330</sup> given that their extreme economic need constitutes a denial of their innate human rights. This right to

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<sup>330</sup> One interesting question this finding raises is whether there are or could be other grounds for a right to migrate, but for the purposes of this thesis I will leave this issue aside for future discussion.

security from extreme economic need and private dependence on the charity of others is derived from the innate right of human beings to freedom and self-preservation. The exercise of this right to seek security does not, however, guarantee the poor entry into a rightful condition under which their rights can be conclusive.<sup>331</sup> This is because the poor's right to self-preservation and freedom from debilitating economic need, exercised via the cosmopolitan right of human beings to visit foreign lands, is at best provisional in the absence of a supranational sovereign power to enforce states' compliance with the obligation to respect these rights.

#### 5.4 The Unenforceable Right to Refuge

Despite the conceptual justification for a right to economic refuge, this right can as a matter of fact be violated at any time, because states' obligations to respect it are unenforceable in the absence of a supranational sovereign.<sup>332</sup> Poverty relief at the civil and supranational levels are primarily duties of the state, but these duties can be enforced only within a rightful condition secured by an international sovereign whose authority derives from the united will of

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<sup>331</sup> In order to actually enter a rightful condition, the poor may have to relocate multiple times before settling in a state that can grant them citizenship rights. Since the approach adopted in this thesis is primarily theoretical, I will leave aside the practical issue of which kinds of factors affect the need (or lack thereof) to relocate before gaining citizenship status in a state.

<sup>332</sup> This obligation to respect the right of foreigners to visit is sometimes violated for practical reasons rather than on principle. For instance, Malaysia and other countries have provided outcome-oriented arguments against allowing the boat people on their shores, such as the consequence of encouraging more to try, which would not be sustainable. (See Euan McKirdy and Saima Mohsin. "Lost at Sea, Unwanted: The Plight of Myanmar's Rohingya 'Boat People'," *CNN* (May 20, 2015). Accessed August 11, 2015.

<http://edition.cnn.com/2015/05/19/asia/rohingya-refugee-ships-explainer/>) These practical considerations may be relevant to long-term solutions to the problems faced by the boat people, but they do not constitute principled rejections of the obligation to help the boat people, and are certainly not valid justifications for sending boatloads of people to their deaths. Given the theoretical focus of this project, I will leave these issues aside for further consideration elsewhere.

all states.<sup>333</sup> As the previous chapter has explained, the potential for conflict between the state's duty to its citizens and its duty to a supranational sovereign makes it impossible for the state to submit to such a sovereign power without jeopardizing its people's interests. Because states could not agree to be subjected to an overarching sovereign, they are not in a rightful condition in relation to one another. States are therefore governed by the right of states, which includes rights to state sovereignty and to resort to unilateral force for self-preservation.<sup>334</sup> In the absence of international public right, states cannot be prohibited from exercising merely unilateral force to compel others to provide for their own citizens or accept economic refugees. Ironically, the provisional nature of the right to relief implies that the poor's right to relief cannot be legitimately enforced and that illegitimate attempts to enforce this right also cannot be prohibited. Although states cannot be prohibited from acting unilaterally to coerce others into fulfilling their duties of relief, such unilateral coercion is unjust because it could not be consistent with public right.<sup>335</sup> Furthermore, foreign intervention in sovereign states violates the right of state sovereignty, thereby undermining the utility of the right of states in approximating universal peace.

For Kant, the possession of a right and its rightful exercise are both crucial matters of justice. Although foreign intervention, as with coercion in general, can be justified as a hindrance to a hindrance, its *means* must also be just.

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<sup>333</sup> Varden argues that the UNHCR (The Office of the UN High Commissioner for Refugees (see "History of UNHCR," UNHCR News (Accessed August 11, 2015) <http://www.unhcr.org/pages/49c3646cbc.html>) is a "global public institution [that] represents both states and refugees, and it is the means through which states and refugee interaction are made rightful." (see "A Kantian Conception of Global Justice," 2051-2052 (footnote))

<sup>334</sup> See Kant, "The Metaphysics of Morals," 482 (6:343-344); and Shell, 174.

<sup>335</sup> The term 'unilateral' does not necessarily indicate the involvement of a single party, but is used in contrast to 'omnilateral', which indicates the involvement of all parties. In other words, 'unilateral' refers to any number of parties less than the total.

Actions are right when they conform to existing law, but where there are no established legal standards, an action is right “if and only if its maxim is consistent with a possible universal law” and it thereby makes possible an instantiation of right.<sup>336</sup> Kant therefore understands the requirement of acting externally so that one’s actions accord with right, as tantamount to a permission to force others to act rightly or to obstruct wrong actions.<sup>337</sup> The problem is that where there are no established legal standards, there is an “implausibly low” threshold for just conduct.<sup>338</sup> But even where coercion is arguably justified, there remains the problem of determining which agents are justified in applying the coercion.<sup>339</sup> I suggest that Kant’s answer must be that coercion is legitimate only when exercised by a public authority to which all subjects could consent. The state serves as this public authority that enforces a rightful condition among individual citizens, but there is no analogous public authority under which states could be subjected to universal reciprocal coercion. This limitation in the analogy between persons and states explains why states cannot legitimately be subjected to external coercion.

Arguably, for Kant, state sovereignty is relative and only provisionally legitimate because it depends on popular sovereignty.<sup>340</sup> This interpretation cannot be correct. Kant recognizes various kinds of states as sovereign even though he claims that only the republican constitution is consistent with the idea of an original contract establishing the united will.<sup>341</sup> A state that fails to represent its people’s united will also fails to achieve a public rightful

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<sup>336</sup> Pogge, “Is Kant’s *Rechtslehre* a ‘Comprehensive Liberalism?’” 142.

<sup>337</sup> *Ibid.*, 142-43.

<sup>338</sup> Pogge also suggests possibilities for mitigating this problem. See “Is Kant’s *Rechtslehre* a ‘Comprehensive Liberalism?’” 144.

<sup>339</sup> Murphy, 94.

<sup>340</sup> Cavallar, 57-58.

<sup>341</sup> *Ibid.*, 57-58.

condition<sup>342</sup> in which freedom is both the principle and condition for any exercise of coercion.<sup>343</sup> Yet, Kant also recognizes that the state's constitution is only its empirical form, and "the various types—"autocratic, aristocratic, democratic, or mixed—express the variety of relationships which can obtain between this 'higher power' and the people."<sup>344</sup> The *specific* form of a state's constitution is merely incidental to history and not objectively necessary in maintaining civil order.<sup>345</sup>

Even imperfectly just states that preserve a rightful condition for their citizens have the right to make decisions and act on the basis of their peoples' united wills. Any forcible interference against such states violates their freedom of choice,<sup>346</sup> which—as discussed in the fourth chapter—is a provisional right of states. Kant's idea of justice is evidently progressive rather than static. In reconciling the demands of justice with empirical reality, history and human nature, he conceives of imperfectly just states as "unavoidable precursors of fully just states," and "historically necessary presuppositions of progress toward full justice," even if there is no guarantee of attaining this.<sup>347</sup> Arguably, this implies that all imperfectly just states must be recognized as legitimate, in recognition of the fact that the conditions for justice must be carefully and gradually cultivated.<sup>348</sup> Any state which has a law-governed constitution at least upholds the idea of law and protects public right and external freedom for

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<sup>342</sup> Varden, "Kant's Non-Absolutist Conception of Political Legitimacy—How Public Right 'Concludes' Private Right in the 'Doctrine of Right'," 347-48.

<sup>343</sup> Kant, "The Metaphysics of Morals," 480 (6:340).

<sup>344</sup> Shell, 165.

<sup>345</sup> *Ibid.*, 165.

<sup>346</sup> Georg Cavallar and August Reinisch, "Kant, Intervention and the 'Failed State'," in *Kant and Law*, edited by B. Sharon Byrd and Joachim Hruschka (Aldershot, UK: Ashgate, 2006), 437.

<sup>347</sup> Rosen, 128.

<sup>348</sup> *Ibid.*, 128.

its citizens,<sup>349</sup> and is therefore better than nothing even if it is only minimally just.<sup>350</sup> Such states have a perfect duty to maintain themselves by preserving the civil condition, and an imperfect duty of self-perfection by improving their constitutions.<sup>351</sup> The right of states entitles all states to govern their relations on the basis of a set of provisional rules grounded in common agreement, including the right to mutual respect for sovereign statehood, thereby approximating an international rightful condition.

Despite the general prohibition against violating state sovereignty, intervention against sovereign states may be justifiable if the target state's actions contravene international law and the right of states. Kant's criteria of justice are relational in nature: the basic forms of injustice are force and fraud, as expressed in the Roman law maxim "*volenti non fit injuria* (to one who has consented no wrong is done)".<sup>352</sup> The right of states is based on this relational principle, which grounds the obligation to respect the internal constitution and moral personality of other states and to refrain from exercising unilateral coercion over them,<sup>353</sup> as well as the rights to defensive and preventive war.<sup>354</sup> Some scholars have argued that it is "no longer tenable to assert that whenever a government massacres its own people or a state collapses into anarchy international law forbids military intervention altogether."<sup>355</sup> Failing to provide a public rightful condition for one's own citizens does not inherently

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<sup>349</sup> Pogge, "Kant's Theory of Justice," 424.

<sup>350</sup> Rosen (119) goes further than I would in arguing for Kant's "belief that there is a duty to be a member of political society, regardless of whether it is just or unjust, as long as it provides an alternative to the lawless state of nature," although he also acknowledges that this is "a highly controversial notion."

<sup>351</sup> Byrd, "The State as a 'Moral Person'," 380.

<sup>352</sup> Rosen, 17.

<sup>353</sup> Cavallar and Reinisch, 435.

<sup>354</sup> Byrd, "The State as a 'Moral Person'," 384.

<sup>355</sup> See Cavallar and Reinisch, 432.

count as injustice against other states, although a plausible argument for interference on the basis of the target state's internal problems is that when a state faces a crisis, the internal politics of its neighbors are unavoidably affected.<sup>356</sup>

However, as a feature of the right of states, the prohibition against intervention generally holds "as long as [a state's] internal conflict is not yet critical, [for] such interference of foreign powers would be a violation of the right of a people dependent upon no other and only struggling with its internal illness; thus it would itself be a scandal given and would make the autonomy of all states insecure."<sup>357</sup> In *Perpetual Peace*, Kant argues that the only case in which coercive foreign intervention would not violate the right of states is when the target state suffers from "critical" internal conflict and anarchy to the extent that it is no longer sovereign.<sup>358</sup> State sovereignty is undefined and absent where there is civil conflict and domestic contestation over sovereign power. If a state "through internal discord, should split into two parts, each putting itself forward as a separate state and laying claim to the whole; in that case a foreign state could not be charged with interfering in the constitution of another state if it gave assistance to one of them (for this is anarchy)."<sup>359</sup> Under these circumstances, the absence of a distinctive sovereign authority that preserves a civil rightful condition means that there is no sovereignty to be violated by foreign intervention. Kant's qualification that a state's civil conflict must be "critical" enough may be vague, yet it is clear that foreign

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<sup>356</sup> Ibid., 434.

<sup>357</sup> Kant, "Toward Perpetual Peace," 319-20 (8:346).

<sup>358</sup> Ibid., 319-20 (8:346).

<sup>359</sup> Ibid., 319 (8:346).

intervention will not violate state sovereignty only when the united will of the people in the target state is seriously fragmented.

Although absence of sovereignty in the target state implies that foreign interveners will not be culpable for violating the right of states, the permissibility of intervention is not otherwise unlimited. Kant's critique of colonization as an abuse of cosmopolitan right expresses a clear objection to unilateral force, even when its target is not a sovereign state. He describes how

the *inhospitable* behavior of civilized, especially commercial, states in our part of the world, the injustice they show in *visiting* foreign lands and peoples (which with them is tantamount to conquering them) goes to horrifying lengths. When America, the negro countries, the Spice Islands, the Cape, and so forth were discovered, they were, to them, countries belonging to no one, since they counted the inhabitants as nothing. In the East Indies (Hindustan), they brought in foreign soldiers under the pretext of merely proposing to set up trading posts, but with them oppression of the inhabitants, incitement of the various Indian states to widespread wars, famine, rebellions, treachery, and the whole litany of troubles that oppress the human race.<sup>360</sup>

Even if an indigenous people does not have a civil rightful condition of the kind that would qualify as a sovereign state, it is wrong for colonial powers to violate their human rights to freedom and self-preservation, as well as their provisional rights to the lands they first occupied. The cosmopolitan right to visit other lands and establish relations with foreign peoples is based on the

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<sup>360</sup> Ibid., 329 (8:358-59).



human right to common ownership of the earth's surface. This right is abused when foreigners oppress and deprive indigenous peoples of their lands, thereby violating the latter's provisional right to these lands, which has its basis in the original right of all human beings to possession of the earth in common. It is obviously unjust to exploit and conquer foreign peoples, but the fact that Kant limits cosmopolitan right to hospitality in foreign lands—even when these are not sovereign state territories—demonstrates how the absence of state sovereignty is a necessary but insufficient condition for foreign intervention.

The strongest case that can be made for foreign intervention is where two necessary conditions are met. First, the target state lacks genuine sovereignty; therefore the intervener would not be guilty of violating state sovereignty. Second, intervention is aimed at posing a hindrance to a hindrance to right. However, even when these necessary conditions are both met, the *sufficient* condition for justifiable foreign intervention is unfulfilled where there is no supranational sovereign power to publicly authorize such uses of force. Foreign intervention can never qualify as universal reciprocal coercion that has been publicly authorized by a sovereign power to which the intervening and target states could both consent to be subjected.<sup>361</sup> Even where foreign intervention in troubled or non-sovereign 'states' is both permissible (in that it does not violate state sovereignty) and collectively initiated by several

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<sup>361</sup> Even the argument that there is tacit universal consent for all human beings to be entitled to exercise their basic rights would not work. This line of argument cannot justify foreign intervention as consistent with right, given the absence of an overarching sovereign power to authorize such coercive action, since states could not consent to the institution of such a supranational sovereign authority.

states,<sup>362</sup> it is a unilateral action that cannot be fully consistent with Kant's framework of right. Because intervention is inherently coercive while its public authorization is conceptually impossible, it could never fulfill Kant's positive criterion of justice, which is that only universal reciprocal coercion is just.<sup>363</sup> Only coercion authorized by a global authority is compatible with rightful peace,<sup>364</sup> because only a global public authority can in principle act on behalf of the stateless people, and no state or group of states can fulfill such a role.<sup>365</sup> This is why resorting to unilateral military action, even with the intention of promoting justice, is not in principle compatible with rightful international relations.<sup>366</sup>

Ultimately, Kant's defense of state sovereignty and his principle of non-intervention do not contradict his arguments for qualified humanitarian intervention in failed states.<sup>367</sup> As a matter of right, foreign intervention has an ambiguous status: it is clearly wrong when it violates the target state's sovereignty; but even when it is theoretically permissible in non-sovereign or failed states, there is at best a provisional right to intervene, since the means for such coercive action could not be publicly authorized. I propose that Kant's sense of 'right' cannot therefore accommodate a sufficient justification of foreign intervention, even for the purposes of poverty relief. The rights of the poor ought to be protected, but in the absence of an overarching sovereign authority, it is unjust for states to be externally coerced into providing relief to

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<sup>362</sup> See Varden's argument against the "unilateralism of powerful states" in "A Kantian Conception of Global Justice," 2057.

<sup>363</sup> I therefore disagree with the argument made by Cavallar and Reinisch (see 437), that intervention seems acceptable where the target state lacks a lawful constitution.

<sup>364</sup> Varden, "A Kantian Conception of Global Justice," 2051.

<sup>365</sup> Ibid., 2051-52 (footnote).

<sup>366</sup> Ibid., 2046.

<sup>367</sup> For a discussion of this apparent conflict, see Cavallar, 58.

their own citizens or to impoverished foreigners. States also cannot exercise merely unilateral coercion to compel other states or non-sovereign peoples to provide relief to their own members or to admit economic refugees. Ironically, the absence of a supranational sovereign authority means that foreign intervention can neither be legitimately (based on what all parties involved could consent to) authorized when it is well intentioned, nor legitimately prohibited when it is exploitative.

## **6. The Provisional Right to Relief**

Ultimately, in the absence of an overarching rightful condition secured by a coercive sovereign authority, there are no grounds on which any cross-border exercise of coercive power could be legitimate. More generally, no coercive effort to relieve poverty—except that of a state for its own citizens—can be consistent with right. I have argued that in the absence of public right, individuals lack security in exercising their innate and private rights. Therefore, they unite to form the state: a public rightful condition that requires for its preservation unconditional poverty relief for all citizens. Outside the state, all right is at best provisional, since a coercive supranational sovereign authority is conceptually impossible. As a result, states may be obliged to accommodate economic refugees out of respect for their cosmopolitan right to hospitality, but this right is unenforceable. This leads me to conclude that coercion is legitimate only within a rightful condition, outside of which all exercises of force, however beneficent, are merely unilateral and wrong.<sup>368</sup> The conceptual impossibility of a supranational sovereign means that states cannot be coerced into fulfilling their duties of relief to citizens or economic refugees.

My argument suggests that even if we view relieving poverty to be a critical element in protecting the human right to freedom, there is no single ‘right’ way to achieve it. I have demonstrated how Kant’s system of right consistently supports two different justifications for poverty relief: domestic poverty relief by means of public redistribution, and relief to impoverished foreigners by granting them refuge. This leads me to identify two avenues for further

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<sup>368</sup> Williams, “Towards a Kantian Theory of International Distributive Justice,” 67.

research. First, examining the viability of other arguments for poverty relief that do not focus solely on resource redistribution could be one way forward for debates within the international distributive justice literature. Second, given the absence of international public right as the key impediment to enforcing the poor's right to relief, further exploring the constraints on justifying relief could be instructive in delimiting the appropriate scope and nature of relief.

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